***** CAPITAL CASE *****

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESSIE HOFFMAN, JR, *Petitioner,*

v.

TIMOTHY HOOPER, WARDEN, *Respondent.*

APPENDIX TO UNOPPOSED APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

APPENDIX A: *State v. Hoffman*, No. 2020-OK-00137 (La. 10/19/21).

January 6, 2022

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2020-OK-00137

VS.

JESSIE D. HOFFMAN, JR.

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IN RE: Jessie Hoffman, Jr. - Applicant Defendant; Applying For Writ Of Certiorari, Parish of St. Tammany, 22nd Judicial District Court Number(s) 265637;

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October 19, 2021

Writ application denied. See per curiam.

JDH

JLW

SJC

JTG

WJC

JBM

PDG

Supreme Court of Louisiana
October 19, 2021

Theresa McCarthy
Second Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2020-OK-00137

STATE OF LOUISIANA

v.

JESSIE D. HOFFMAN

ON SUPERVISORY WRIT TO THE TWENTY-SECOND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY

PER CURIAM:

Writ denied. In 1998, a St. Tammany Parish jury found Jessie D. Hoffman guilty of the first degree murder of Mary "Molly" Elliot. After finding Hoffman guilty as charged, jurors unanimously agreed to impose a sentence of death, in light of the aggravating circumstances that Hoffman was engaged in the perpetration or attempted perpetration of an aggravated kidnapping, armed robbery, and aggravated rape; and the offense was committed in an especially heinous, atrocious, or cruel manner. This Court affirmed. *State v. Hoffman*, 98-3118 (La. 4/11/00), 768 So.2d 542, *cert. denied*, *Hoffman v. Louisiana,* 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277 (2000).

The evidence presented at trial showed that on November 27, 1996, while working as a valet at the Sheraton in downtown New Orleans, eighteen-year-old Hoffman kidnapped Ms. Elliot at gunpoint as she was leaving work. The two drove in her car to a bank in New Orleans East where she withdrew cash from an ATM and gave it to Hoffman. Next, they drove to a boat launch on the Middle Pearl River in St. Tammany Parish. There he raped her and fatally shot her once in the head and drove away. A hunter discovered the victim's body on a makeshift dock located near the boat launch the next day. Hoffman confessed to the kidnapping, rape, and

murder.

At trial, defense counsel conceded guilt of second degree murder and argued that Hoffman was not guilty of first degree murder because the killing was not intentional. The defense theory was that, consistent with his confession, Hoffman intended to leave the victim alive at the boat launch and drive away, but he accidentally shot her during a struggle over the gun. On the other hand, the State argued that the crime was premeditated and the shooting was intentional. Specifically, the State furthered a "death march" theory: that Hoffman forced the victim at gunpoint to walk naked away from the boat launch area through a debris-covered path to the dock where he shot her execution-style. Ultimately, the jury rejected the defense's theory that Hoffman shot the victim unintentionally and convicted him of first-degree murder.

After his conviction and sentence became final, post-conviction proceedings were initiated in 2001. In his first post-conviction application, Hoffman raised twenty-four claims for relief alleging: racial discrimination in the selection of the grand jury foreperson, violations of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), racial bias during jury deliberations, ineffective assistance of counsel, right to fair trial violated by restriction of voir dire, due process rights violation for failure to record bench conferences, constitutional violations during the jury's visit to the crime scene, interference with Sixth Amendment right to counsel, death sentence violates the Eighth Amendment because Hoffman is mentally ill, violations of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), juror misconduct, erroneous jury instructions, jury incorrectly considered youth as an aggravating factor, violation of *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), selection of trial venue tainted by racism, violation of *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), denial of a fair clemency process, lethal injection violates the Eighth Amendment, Eighth

Amendment bars execution of incompetent individuals under *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), violations of international law, jury failed to consider all mitigating evidence, cumulative error, and violation of *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

The district court held an evidentiary hearing on the claim of ineffective assistance of counsel at sentencing. Following the hearing, the district court concluded that Hoffman failed to meet his burden of proof under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), having found that trial counsels' representation was "competent and reasonable." In 2007, the district court summarily dismissed the remaining claims. This Court denied Hoffman's writ application. *State v. Hoffman*, 07-1913 (La. 12/12/08), 997 So.2d 554. The federal district court denied Hoffman's subsequent habeas application and granted a certificate of appealability. *Hoffman v. Cain*, CIV.A. 09-3041, 2012 WL 1088832 (E.D. La. 3/30/12). The Fifth Circuit affirmed the decision of the district court. *Hoffman v. Cain*, 752 F.3d 430 (5th Cir. 2014).

On February 22, 2019, Hoffman filed a second application for post-conviction relief, raising seven claims for relief. He asserted the claims were not barred as repetitive pursuant to La.C.Cr.P. art. 930.4 because they were "new or different" from previously-raised claims and could not have been included in his appeal or first post-conviction application because they were based upon new law, new science, and/or new facts.

First, Hoffman alleged that racial bias during jury deliberations requires reversal of his death sentence pursuant to the United States Supreme Court's decision in *Pena-Rodriguez v. Colorado*, 580 U.S. —, 137 S.Ct. 855, 197 L.Ed.2d 107 (2017). Second, Hoffman argued his death sentence is excessive and violates the Eight Amendment in light of his history of chronic childhood trauma. Third, Hoffman asserted his death sentence is excessive and violates the Eighth

Amendment in light of his age at the time of the offense. Fourth, he argued his execution would be cruel due to the length of time he has lived on death row. Fifth, he argued his death sentence is arbitrary and capricious because it was imposed pursuant to Louisiana's capital sentencing scheme, which, he alleges, fails to sufficiently narrow the class of offenders eligible for the death penalty. Sixth, he asserted that the death penalty is unconstitutional in light of a purported national consensus against the practice. Finally, in his seventh claim, Hoffman contended that new evidence establishes that the prosecution withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, and elicited misleading testimony in violation of *Napue*, 360 U.S. 264, 79 S.Ct. 1173.

On September 20, 2019, the district court summarily dismissed the application finding each claim was previously litigated, or meritless, or both. We have reviewed Hoffman's arguments and the State's opposition and find no reason to disturb the district court's ruling.

First, Hoffman fails to show the district court erred in summarily denying his application. In addition, as discussed below, we find any procedural error by the district court harmless because Hoffman's claims were nonetheless meritless.

Second, regarding the district court's denial of the racially biased jury claim, Hoffman asserts that the effect of *Pena-Rodriguez*, 580 U.S. —, 137 S.Ct. 855, was to transform previously inadmissible evidence—statements made by jurors during deliberations—into admissible evidence in instances where "there is an indication that racial bias or stereotype may have been considered by the jury." He also alleges that in *Buck v. Davis*, 580 U.S. —, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017), the Supreme Court held that any race-based considerations in the penalty phase of a capital case requires reversal. Hoffman argues that the decisions in *Pena-Rodriguez* and *Buck* rendered the instant racially biased jury claim different—within the meaning of La.C.Cr.P. art. 930.4—than the claim in his first post-conviction application.

In *Pena-Rodriguez*, the United States Supreme Court addressed "whether the Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt." 137 S.Ct. at 867. The "no-impeachment rule" developed from a centuries-old principle that once a jury's verdict has been entered, "it will not later be called into question based on the comments or conclusions they expressed during deliberations." *Id.*, 137 S.Ct. at 861. Many states have codified this principle as an evidentiary rule.[1] In *Pena-Rodriguez,* the Supreme Court held

> that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Id., 137 S.Ct. at 869. The Supreme Court warned that "[n]ot every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry." *Id*. Rather, for a case to warrant further inquiry,

> there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict.

Id. The Supreme Court did not address what procedure a trial court must follow when confronted with an allegation of juror bias nor did it "decide the appropriate standard for determining when evidence of racial bias is sufficient to require that the

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[1] Louisiana's no-impeachment rule is contained in La.C.E. art. 606(B), which provides:

> Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether any outside influence was improperly brought to bear upon any juror, and, in criminal cases only, whether extraneous prejudicial information was improperly brought to the jury's attention. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

verdict be set aside." *Id*., 137 S.Ct. at 870.

In *Buck*, a death-sentenced prisoner raised a claim of ineffective assistance of counsel due to his lawyer's decision to call an expert witness whose report reflected that because the defendant was Black, he was disproportionately predisposed to violent conduct. 137 S.Ct. at 775. The Supreme Court found that since future dangerousness was a key point to be decided by the jury during the penalty phase, the expert's report was "potent evidence" because it provided what appeared to be "hard statistical evidence—from an expert—to guide an otherwise speculative inquiry." *Id*., 137 S.Ct. at 776. The Supreme Court found, "[the expert's] testimony appealed to a powerful racial stereotype—that of black men as 'violence prone.'" While there were only two references to race during the expert's testimony, the Supreme Court concluded that its impact was nevertheless significant. *Id*. at 777 (noting "[s]ome toxins can be deadly in small doses."). Ultimately, the Supreme Court held that Mr. Buck was prejudiced by his counsel's error and had demonstrated ineffective assistance of counsel under *Strickland*, 466 U.S. 668, 104 S.Ct. 2052.

With that background, we now address whether *Pena-Rodriguez* and *Buck* render Hoffman's juror bias claim "new or different" from the one he raised in the previous application. The State concedes it does and we agree. While the underlying claim for relief is the same, courts dismissed Hoffman's previous claim by relying on no-impeachment rules.[2] *Pena-Rodriguez* provides courts with the opportunity to consider evidence that was previously barred. The no-impeachment rule rendered

[2] When Hoffman raised the claim of juror bias in his first post-conviction application, the State argued the court was barred from considering the jurors' statements pursuant to La.C.E. art. 606(B). The trial court summarily dismissed the claim without issuing reasons. When the Eastern District of Louisiana considered the case on habeas, it denied relief explicitly on the grounds that the juror statement was inadmissible pursuant to the no-impeachment rule contained in Federal Rule of Evidence 606. *Hoffman*, 2012 WL 1088832 *22–23. The Fifth Circuit upheld the ruling of the district court on these grounds. *Hoffman*, 752 F.3d at 451.

the previous claim virtually impossible to prove. Since the issue now is whether the evidence supports removing the no-impeachment bar, the claim is "new or different" for purposes of La.C.Cr.P. art. 930.4.[3] Accordingly, the district court erred when it found the claim was previously litigated. Nevertheless, we find that Hoffman's claim lacks merit.

First, we do not address the retroactivity of *Pena-Rodriguez*.[4] Even if *Pena-Rodriguez* applied retroactively to Hoffman's case, Hoffman has not met the showing required by *Pena-Rodriguez* to pierce Louisiana's no-impeachment rule. In *Pena-Rodriguez*, the Court described the requisite showing in a number of different ways: a juror has made "a clear statement that indicates he or she relied on racial stereotypes or animus to convict," 137 S.Ct. at 869; "that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict," *id*.; and, finally, "the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict." *Id.*

In this case, the juror statements suggest they held beliefs that may have rested on racial stereotypes. However, the statements by Hoffman's jurors are not nearly as "egregious and unmistakable" as those presented in *Pena-Rodriguez.* 137 S.Ct. at

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[3] Because we find that *Pena-Rodriguez* rendered Hoffman's juror bias claim "new or different," for purposes of La.C.Cr.P. art. 930.4, we need not decide whether *Buck* presents such a significant change in the law to render the underlying juror bias claim "new or different" from the claim raised in the prior application that was adjudicated before *Buck* was decided.

[4] While the United States Supreme Court has not ruled on whether *Pena-Rodriguez* applies to cases on collateral review, three Federal Circuit Courts have addressed the issue. In *Tharpe v. Warden,* the Eleventh Circuit held that under the framework announced in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d. 334 (1988), *Pena-Rodriguez* does not apply retroactively because the new rule it announced is neither substantive nor a watershed rule of criminal procedure. 898 F.3d 1342, 1346 (11th Cir. 2018), *cert. denied*, *Tharpe v. Ford*, — U.S. —, 139 S.Ct. 911, 203 L.Ed.2d 600 (2019). Recently, the Fourth Circuit Court of Appeal likewise concluded that *Pena-Rodriguez* is barred from retroactive application in federal habeas review under *Teague* and *Edwards* because the rule it announced was not substantive. *Richardson v. Kornegay*, 3 F.4th 687, 707 (4th Cir. 2021). Finally, while not formally ruling on the issue, the Fifth Circuit called the contention that *Pena-Rodriguez* applies retroactively "exceedingly doubtful." *In re Robinson,* 917 F.3d 856, 869 (5th Cir. 2019). None of these decisions bind this Court.

870. While the Supreme Court did not state that the showing made in *Pena-Rodriguez* was the minimal showing of racial bias required to pierce the no-impeachment rule, it did state that the showing must indicate that racial bias was relied upon to convict, or, as in this case, impose a death sentence. We find that the evidence presented by Hoffman does not amount to "a clear statement that indicates [a juror] relied on racial stereotypes or animus to convict," nor does it prove that "racial animus was a significant motivating factor in the juror's vote" for the death sentence. Accordingly, we conclude that the district court did not err in finding the claim meritless, and the claim warrants no further attention.

Next, Hoffman argues that the district court erred when it found that his excessive sentence claims based upon childhood trauma and his relative youth were repetitive and meritless. Hoffman asserts that these claims are new and exempted from the procedural bars because they are based on new law, new science, and new facts that developed since his first post-conviction application was litigated. Hoffman contends that the recent decisions in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), "emphasize a new proportionality requirement in sentencing." He argues that new scientific research about adolescent brain development supports expanding the reduced moral culpability and greater capacity for rehabilitation currently recognized in law for those under age 18. He also emphasizes that the instant post-conviction application is predicated on newly obtained neuropsychiatric evaluations and imaging and a recent diagnosis of Complex-PTSD. Neither of these claims were raised on appeal or in Hoffman's previous post-conviction application. Accordingly, we find that the district court erred in finding the claims were previously litigated. Nevertheless, we find that both claims are meritless.

We first address Hoffman's claim that the sentence is excessive in light of his

traumatic childhood. This claim is largely supported by newly-obtained reports from mental health experts. The district court was not persuaded by the mental health experts presented by Hoffman in support of his first post-conviction application. Instead, the district court credited the testimony of the court-appointed experts who concluded that Hoffman did not, at the time of the crime, suffer from any mental defect. Apparently, the new expert reports supporting the instant post-conviction application did not change how the district court judged the credibility, reliability, or weight of the testimony of the original trial experts. We review this issue under the manifest error standard:

> It is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable.
> …
> When findings are based on determinations regarding the credibility of witnesses, the manifest error—clearly wrong standard demands great deference to the trier of fact's findings.

Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989). Hoffman has not shown that the district court committed manifest error when it rejected the new mental health evidence. Accordingly, this claim is without merit and warrants no further attention.

Hoffman also argues that his sentence is excessive in light of his age at the time of the crime (two months past his eighteenth birthday) based on what he contends is a national consensus against executing people under the age of twenty-one and therefore violating the Eighth Amendment. The Eighth Amendment draws its meaning "from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 100–01, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958). The United States Supreme Court has found "that the 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'" *Atkins v. Virginia*, 536 U.S. 304, 312, 122 S.Ct. 2242, 2247,

153 L.Ed.2d 335 (2002), quoting *Penry v. Lynaugh*, 492 U.S. 302, 331, 109 S.Ct. 2934, 2953, 106 L.Ed.2d 256 (1989); *see also State v. Wilson*, 96-1392, p. 7 (La. 12/13/96), 685 So.2d 1063, 1067 ("One of the most conservative and acceptable methods of determining the excessiveness of a penalty is to examine the statutes of the other states.").

As of this writing, twenty-three states have banned the death penalty altogether and three states have governor-imposed moratoriums in place.[5] However, no state that maintains the death penalty has raised the age of eligibility for the sentence above eighteen years old. Accordingly, Hoffman has not provided sufficient objective evidence of a national change in contemporary values to prove his sentence violates the Eighth Amendment. This claim is without merit and warrants no further attention.

Next, Hoffman argues the district court erred in summarily denying his *Brady* and *Napue* claims as repetitive and unmeritorious. He asserts that while these issues were raised in his first post-conviction application, the claims in the instant application are based on newly discovered evidence excepting him from the bar on repetitive applications contained in La.C.Cr.P. art. 930.4. We find that although the claims rest on some ostensibly new information that may render them "new or different" exempting him from the La.C.Cr.P. art. 930.4 procedural bar, the district court did not err when it found the claims meritless.

In *Napue*, the United State Supreme Court held that a conviction obtained "when the State, although not soliciting false evidence, allows it to go uncorrected when it appears" must be vacated under the Fourteenth Amendment. 360 U.S. at 269, 79 S.Ct. at 1177. The defendant is entitled to a new trial "if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . .'"

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[5] *See* Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited September 29, 2021).

Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972), quoting *Napue*, 360 U.S. at 271, 79 S.Ct. at 1178.

In *Brady*, the Supreme Court held that the suppression by the prosecution of evidence favorable to the accused violates a defendant's due process rights where the evidence is material either to guilt or punishment, without regard to the good or bad faith of the prosecution. 373 U.S. at 87, 83 S.Ct. at 1196–97. A prosecutor does not breach his constitutional duty to disclose favorable evidence pursuant to *Brady* "unless the omission is of sufficient significance to result in the denial of the defendant's right to a fair trial." *United States v. Agurs*, 427 U.S. 97, 112, 96 S.Ct 2392, 2400, 49 L.Ed.2d 342 (1976). A reviewing court determining materiality must ascertain, "not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995), citing *States v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381, 87 L.Ed.2d 481 (1985).

In the post-conviction application, Hoffman argued that the State permitted misleading testimony and suppressed evidence in violation of *Napue* and *Brady*. At trial, the pathologist who performed the autopsy of the victim testified that he was not able to make any conclusions about the lividity of the body when it was discovered. This was relevant to establish the location where the victim was shot because a lack of lividity may indicate that her body had moved after she died. Evidence of a lack of lividity, therefore, would support the defense theory that she was shot at the boat launch and her body floated to the nearby dock where it was found. In his first post-conviction application, Hoffman's *Napue* and *Brady* claims rested, in part, on an undisclosed report authored by the coroner's investigator in which she noted that no lividity was observed in the body at the crime scene. The claims resting on this evidence did not prevail. The *Napue* and *Brady* claims in

instant application are based on newly obtained statements by additional witnesses who confirmed the lack of lividity observable at the crime scene.

First, as to the *Napue* claim, we find that Hoffman presents no evidence that the pathologist knew of these observations and testified falsely that he did not. Second, as to the *Brady* claim, putting aside whether the information was suppressed by the State, the new evidence does little more to show that the victim was shot at the boat launch than the investigator's report that was attached to the first post-conviction application and deemed not material. *Hoffman*, CIV.A. 09-3041, 2012 WL 1088832, at *12. Moreover, at trial, the location of the body was not the only evidence relied on by the State to establish Hoffman's specific intent to kill. *See Hoffman*, 98-3118, p. 48, 768 So.2d at 585.[6] Accordingly, Hoffman has not established that the evidence relating to the location of the killing is material to his guilt or innocence. For that reason, the district court did not err in denying these claims. The *Napue* and *Brady* claims warrant no further attention.

Next, Hoffman asserts that the district court erred in summarily finding his challenge of the arbitrary, capricious, and discriminatory manner of the death penalty scheme repetitive and meritless. On appeal, this Court, pursuant to La.C.Cr.P. art. 905.9 and La.S.Ct. Rule 28, considered "whether the jury imposed the sentence under influence of passion, prejudice or other arbitrary factors; whether

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[6] On appeal, this Court found that,

> [t]he State's case for specific intent rested on forensic evidence concerning the nature of the wound. According to the coroner's forensic examination, the victim was shot from a distance of approximately eighteen to twenty-four inches away. The coroner further testified the location of the fatal wound on the victim's head made it unlikely the defendant and victim were struggling over the gun during the shooting. Instead, the coroner indicated that if the victim had reached for the defendant's wrist, the wound would have appeared in the victim's torso as opposed to her head. The coroner also testified the victim's knees and legs showed superficial abrasions indicating that the victim was on her knees before her death. When asked if a head wound would be likely if the victim was kneeling, the coroner responded affirmatively.

Hoffman, 98-3118, p. 48, 768 So.2d at 585.

the evidence supports the jury's findings with respect to a statutory aggravating circumstance; and whether the sentence is disproportionate, considering both the offense and the offender." *Hoffman*, 98-3118, p. 51, 768 So.2d at 587. This Court found that the only support for the argument of racial discrimination was the fact that Hoffman is African-American and the victim was white, and concluded there was no reversible error. *Id*.

In the instant claim, Hoffman sought to provide additional support for the allegation of racial discrimination in the imposition of the death penalty. He provided studies that show that African-Americans, like Hoffman, are overrepresented among those sentenced to death in Louisiana in general and in the 22nd Judicial District in particular. These statistics do not prove that Hoffman's particular sentence was imposed in a manner that was arbitrary, capricious, or discriminatory. Moreover, in *State v. Dressner*, this Court recently rejected an allegation that Louisiana's death penalty scheme is arbitrary and capricious. 18-0828, p. 6 (La. 10/29/18), 255 So.3d 537, 543, citing *Lowenfield v. Phelps*, 484 U.S. 231, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988). Hoffman has not provided sufficient evidence to disturb that conclusion, thus the claim warrants no further attention.

Next, Hoffman states that the district court erred in summarily rejecting his claim that the death penalty is unconstitutional as repetitive and meritless. The instant claim is supported by what Hoffman contends is a current national consensus against the practice of the death penalty that demonstrates an evolving standard of decency that is relevant to Eighth Amendment analysis. Although the district court incorrectly concluded that the claim had been previously litigated, we cannot say it erred when it concluded it was meritless. Hoffman concedes there is no precedent by this Court or the United States Supreme Court finding a national consensus against the death penalty requiring its categorical exclusion. While its national

support may be waning,[7] no decision binding on this Court has held that the death penalty is barred by the Eighth Amendment and we do not find that it is barred by the Louisiana Constitution. Accordingly, this claim is without merit and warrants no further attention.

Last, Hoffman contends that the district court erred in summarily denying his claim that the Eighth Amendment bars his execution due to the length of time he has spent on death row. However, Hoffman points to no law that supports his argument. We agree with the district court's reliance on this Court's decision in *State v. Sparks*, in which we concluded, "[t]he long delays that are the hallmark of capital litigation do not present an independent Eighth Amendment claim." 88-0017, p. 80 (La. 5/11/11), 68 So.3d 435, 492–93. This Court also noted in *Sparks* that, "[o]ther jurisdictions have considered the Eighth Amendment claim that long confinement on death row constitutes cruel and unusual punishment and have soundly rejected such claims." *Sparks*, 88-0017, p. 80, 68 So.3d at 493. Accordingly, the district court did not err in denying this claim on the merits. This claim warrants no further attention.

Hoffman has now fully litigated his application for state post-conviction relief. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4. Notably, the Legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Hoffman's claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter, unless Hoffman can show that one of the narrow exceptions authorizing the filing of a successive

[7] As noted above, 23 states prohibit the death penalty and three additional states have a moratorium on executions. Of note, three states in the last three years—New Hampshire (2019), Colorado (2020), and Virginia (2021)—have ended the practice. *See* Death Penalty Information Center, https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited September 29, 2021).

application applies, he has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.