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

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESSIE HOFFMAN, JR, *Petitioner,*

v.

TIMOTHY HOOPER, WARDEN, *Respondent.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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

APPENDIX B: Judgment summarily denying application for post-conviction relief and motion for evidentiary hearing, 22nd Judicial District Court Parish of St. Tammany, State of Louisiana, September 20, 2019, State v. Hoffman, Docket No. 265637, Div. H.

APPENDIX C: Affidavit and statement of Juror M.L. obtained during post-conviction proceedings, and attached to Petitioner's post-conviction application and writ application submitted to the state courts.

APPENDIX D: United States Supreme Court, Application No. 21A310 Order Granting an Extension of Time Until March 4, 2022.

March 4, 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;

– – – – – –

October 19, 2021

Writ application denied. See per curiam.

JDH

JLW

SJC

JTG

WJC

JBM

PDG

Supreme Court of Louisiana
October 19, 2021

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.

STATE OF LOUISIANA

VERSUS

JESSIE HOFFMAN

22ND JUDICIAL DISTRICT COURT

PARISH OF ST TAMMANY

STATE OF LOUISIANA

NO. 265637, DIVISION "H"

FILED: September 20, 2019

DEPUTY CLERK

Kristi V. Couch, Deputy Clerk

JUDGMENT

This matter is before the Court on Petitioner's Second or Subsequent Petition for Post-Conviction Relief and Motion for Evidentiary Hearing. Petitioner was initially tried and convicted of first degree murder on June 25, 1998. The jury returned a verdict recommending a death sentence on June 27, 1998, and this Court pronounced that sentence on September 11, 1998. The conviction and sentence were affirmed by the Louisiana Supreme Court on April 11, 2000. The United States Supreme Court denied Petitioner's writ application on October 16, 2000. Petitioner subsequently filed his first Application for Post-Conviction Relief, which was ultimately denied by this Court on May 1, 2007. The Louisiana Supreme Court denied a writ application as to the first Application on December 12, 2008. On March 10, 2009, Petitioner filed a petition for a writ of habeas corpus in the U.S. District Court for the Eastern District of Louisiana. On March 30, 2012, the Federal District Court denied the petition. The United States Fifth Circuit Court of Appeals affirmed the denial on May 12, 2014.

Petitioner now requests that this Court grant him a new trial; a new capital sentencing hearing; an evidentiary hearing and further discovery; and other relief as requested in the Petition for Post-Conviction Relief and Motion for Evidentiary Hearing. Petitioner notes that he is exempt from the two year time limit for Post-Conviction Relief under La. C.C.P. art. 930.8, as he has been sentenced to death. In his latest Petition, Petitioner makes seven (7) separate claims for relief which he claims are "new or different" and could not have been filed in previous applications because they are based upon new law, new science, and/or new facts. Those claims are:

I. Racial Bias During Jury Deliberations

II. The Death Sentence is Excessive in Light of Petitioner's History of Chronic Childhood Trauma

III. The Death Sentence is Excessive in Light of Petitioner's Age at the Time of the

Offense

IV. Execution of Petitioner Would be Cruel and Unconstitutional

V. The Death Sentence in this Case is Arbitrary and Capricious

VI. The Death Penalty is Unconstitutional

VII. New Evidence Establishes that the Prosecution Withheld *Brady* Evidence.

Factual History

As recited by the United States Fifth Circuit Court of Appeals, *Hoffman v. Cain*, 752 F.3d 430, p. 434-435 (5th Cir. 2014):

> That Hoffman was responsible for the kidnapping, robbery, rape, and death of Elliot is virtually unchallenged. The evidence at trial showed that on the night of November 27, 1996, Hoffman kidnapped Elliot at gunpoint as she left her parking garage in downtown New Orleans after work. He forced Elliot to drive her car to an ATM machine and withdraw around $200 from her account. As the Louisiana Supreme Court noted: "The ATM video tape shows the terror on Ms. Elliot's face as she withdrew money from her account, and Hoffman can be seen standing next to his victim." As his girlfriend would later corroborate, she and Hoffman went shopping afterwards and he paid in cash for several items. Additionally, the State presented DNA and serological evidence linking Hoffman to Elliot.
>
> Hoffman then forced Elliot to drive to a remote area in St. Tammany Parish. Elliot repeatedly begged Hoffman not to hurt her, and he told her he would not because she was cooperating. Elliot "offered herself" while begging for her safety, and Hoffman proceeded to have sexual intercourse with her, all the while still armed with the handgun. Hoffman claimed that the sex was consensual, but the jury did not believe him, and found aggravated rape as one of the aggravating circumstances supporting its verdict of death.
>
> In his final videotaped confession, Hoffman confessed to kidnapping, robbing, and having sex with Elliot. Hoffman claimed that he shot Elliot during a struggle over the gun at a boat-launch[.]

Claims for Relief

As to the claim of racial bias during jury deliberations (Claim I), this Court finds that that issue was thoroughly reviewed and denied previously in this case. In his prior application, Petitioner produced the same juror affidavit which he contends demonstrates racial bias held by the jury. The U.S. Fifth Circuit Court of Appeals opined: "In examining the affidavit, the state

count cannot be said to have been unreasonable or contrary to federal law in deciding that no bias or discrimination was shown. The affidavit presents juror speculation, and, more importantly, affirms that the jury acted on the basis of the evidence and the jury instructions." *Hoffman v. Cain*, 752 F.3d 430, at 451 (2014). That Court further stated, "On collateral review, 'habeas petitioners are not entitled to relief based on a constitutional error unless the error had [a] substantial and injurious effect or influence in determining the jury's verdict.' Hoffman does not meet this high standard because, again, the affidavit indicates that the jury acted on the basis of the evidence and the jury instructions. As a result, Hoffman's claims of racial discrimination by the jury must fail." *Id*, at 451-452, citing *Oliver v. Quarterman*, 541 F.3d 329, 341 (5th Cir. 2008*); Kotteakos v. United States*, 328 U.S. 750, 776, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946). This Court agrees with the Fifth Circuit Court of Appeals' interpretation and declines to reverse its prior decision.

As to the claims of excessiveness of the sentence in light of Petitioner's childhood trauma and age at the time of the offense (Claims II & III), the Court similarly finds that these claims lack merit and have previously been denied. See *Hoffman v. Cain*, 2012 WL 1088832, pg. 29. The Court notes that the Louisiana Supreme Court conducted a thorough proportionality review in this case, and declines to reverse any finding on the appropriateness of the sentence.

As to the claim of excessive sentence in light of Petitioner's extended imprisonment on death row (Claim IV), the Court finds that claim meritless as well. Petitioner claims that his execution after having spent several years on death row equates to cruel and unusual punishment beyond the boundaries established by the constitution. This Court disagrees with Petitioner's interpretation of the opinions regarding the time and conditions under which prisoners sentenced to death must await their execution. The Court notes that the delay is caused in no small part by the comprehensive review which death sentence cases necessitate, and that such delays are not uncommon. In *State v. Sparks*, the Louisiana Supreme Court noted "The long delays that are the hallmark of capital litigation do not present an independent Eighth Amendment claim." 1988-0017 (La. 5/11/11), 68 So.3d 435, at 492-493; citing *Johnson v. Bredesen,* 558 U.S. 1067, 130 S.Ct. 541, 175 L.Ed.2d 552 (2009)*; Id* at 544 (Thomas, J., unaware of any constitutional support for the novel argument that delay on death row is cruel and unusual punishment).

As to the claim that Petitioner's death sentence is arbitrary, capricious, and discriminatory (Claim V), the Court again finds that this issue was disposed of previously in this case. In the original appeal of this case, the Louisiana Supreme Court noted, "We review death sentences to

determine whether the sentence is disproportionate to the penalty imposed in other cases, considering the offense and the offender. If the jury's recommendation of death is inconsistent with sentences imposed in similar cases in the same jurisdiction, an arbitrary inference arises. *State v. Hoffman*, 1998-3118 (La. 4/11/00) 768 So.2d 542, at 589; citing *State v. Sonnier*, 380 So.2d 1, 7-8 (La. 1979). That Court then conducted an extensive review of similar cases both within the 22nd Judicial District Court of Louisiana and on a state-wide basis. The Court concluded that, "[i]n light of the relevant case law, it was certainly reasonable for the jury to return the death penalty based on the facts of this case." *Id*, at 591. Regarding Petitioner's renewed argument that his conviction and sentence were unconstitutional based on the racial prejudice inherent in St. Tammany Parish, the Court notes that it has already ruled against Petitioner and declines to reverse its decision.

As to Petitioner's claim that the death penalty is unconstitutional (Claim VI), the Court notes that this claim has already been litigated and is otherwise meritless. Petitioner provides no authority for this Court to declare his sentence generally unconstitutional. There being no state or federal legislation, or jurisprudence declaring the death penalty unconstitutional, this Court declines to grant that relief.

As to Petitioner's claim of newly discovered evidence establishing prosecutorial misconduct or withholding of exculpatory evidence (Claim VII), this Court finds those claims meritless and previously litigated. Petitioner claims that the prosecution failed to turn over a report generated by coroner investigator, Joy Pfeffer. Petitioner claims further that prosecution presented false and misleading testimony. On this issue, the United States District Court for the Eastern District of Louisiana concluded that "the coroner's report has highly questionable value to the defense." *Hoffman v. Cain*, 2012 WL 1088832, pg. 12. That Court further stated, "[g]iven overwhelming evidence of Hoffman's specific intent to kidnap, rob, rape, murder his defenseless victim, to ultimately cover up his crimes, during hours of torment that he caused his defenseless victim, while armed, negate the speculative value of this report." *Id.* This Court similarly finds that the report was not material or favorable to the defense in this case. The Court further finds that there was not false testimony at the trial and no prejudice resulted against Petitioner. The Court specifically notes that the defense's theory of the case was presented to, and considered by, the jury. The Court concludes that the Petitioner has failed to show that the trial would have resulted differently based on the report and testimony subject to this claim.

After reviewing the arguments and exhibits submitted by Petitioner, the record in this case, and the opinions of the superior courts, this Court finds that all of the claims submitted in this Petition for Post-Conviction Relief have previously been adjudicated or are otherwise meritless. As noted in the opinion of the U.S. District Court, this Court has already held exhaustive post-conviction proceedings, including consideration of depositions and documentary materials. *Hoffman v. Cain*, 2012 WL 1088832, footnote 1, not reported in F.Supp.2d (2012). Thus, this Court declines to grant an evidentiary hearing in this matter. The Court concludes that the factual and legal issues of this matter can be resolved under La. C.Cr.P. Articles 929(A) and 930.4 and that this application may be summarily dismissed. It is clear that Petitioner's claims for relief are without merit and fail to establish grounds for Post-Conviction Relief.

Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that Petitioner's Application for Post-Conviction Relief is hereby **DENIED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner's Motion for Evidentiary Hearing is **DENIED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court for the Parish of St. Tammany serve a copy of this Judgment upon Petitioner, Jessie Hoffman, through his counsel of record, and upon the District Attorney for the 22nd Judicial District Court in the Parish of St. Tammany, State of Louisiana.

Covington, Louisiana, this 20 **day of September, 2019.**

JUDGE ALAN ZAUNBRECHER
DIVISION "H"

AFFIDAVIT OF MARI LOWER

COUNTY OF PEARL RIVER

STATE OF MISSISSIPPI

Before me, the undersigned authority, came and appeared MARI LOWER, who, after being sworn, deposed and said:

1. My name is Mari Lower. I was a member of the jury at Mr. Hoffman's capital trial. We found him guilty of first-degree murder, and sentenced him to death.

2. In 2003, I was interviewed by Caroline Wallace and Ravinder Thukral, people working with Mr. Hoffman's lawyers, about my experiences as a juror on that case. Based on our conversation, they wrote up a declaration which I read through and signed to confirm that it was the truth to the best of my knowledge, memory and belief.

3. That declaration is attached to this affidavit. I have read it through and confirm that it accurately reflects my experiences as a juror on Mr. Hoffman's case.

Mari Lower

Signature: Mari Lower

SWORN AND SUBSCRIBED before me on this 16th day of July, 2011.

Carrie E. Logan

Notary Public's printed name: Carrie E. Logan

Notary ID# 64793

My commission expires: 12-16-2013

STATE OF MISSISSIPPI
CARRIE E. LOGAN
ID NO. 64793
Commission Expires
12-16-2013
NOTARY PUBLIC
FORREST COUNTY

STATE OF LOUISIANA

ST TAMMANY PARISH

I, Mari Lower, declare

I sat on the jury of the 1998 capital murder trial of Jessie Hoffman; we convicted him of first degree murder and sentenced him to death.

I felt bad for the Defendant. He seemed hopless. However, the crime was very bad. The defendant showed no remorse throughout the trial and came across as very cold-blooded. I watched him during the trial. That had a big impact on me. Looking at him you could tell that he did this cold-blooded crime. I felt sure that if he were ever to get out of prison he would do it again. Several of the jurors were worried that he might be released one day or escape and if he did he'd do it again. This was discussed in deliberations and considered by us in deciding that he should get the death penalty. I felt it was my duty to make sure that the younggirls out there were protected from him. This was very important to our decision.

M Lower

I remember the defendent's family testifying, including his grandmother. I had sympathy for his family. However I was not convinced by the defense argument that we should not give him the death penalty. For example, they said he tried to be a football star. I would have liked to be a movie star, but that didn't mean I went out and committed murder.

There were no black people on the jury. The defense made sure that there weren't any. From the start of trial I thought that was deliberate by the defense so they could play the race card and get him off later. I've heard about people getting off on technicalities like that before. The jurors speculated about this during the trial.

We also thought it was a defense strategy to use his race and background in other ways. They obviously tried to use it as an excuse to try to make us feel sorry for him being a poor black man from the projects so he did not get the death penalty. Like O.J Simpson using it to get off. This tactic did not surprise me. I've seen that attitude before.

M. Juror

with people using their background to justify whatever they can. I believe that people like that should take responsibility for what they do. What he did to that woman was really bad. It was clear to me as soon as I heard the evidence about what he did that he deserved the death penalty. Most of the jurors felt the same way.

We were taken to the crime scene during the trial. It was a very isolated place, right near where I live. There were a lot of police and the lawyers there. I do not remember the defendant coming with us. We were allowed to ask questions.

During the penalty phase deliberations we wanted to know whether the defendant had a juvenile record. We thought that given his background he may have a history of drugs and things like that. We wondered if he was in a gang. The judge told us we were not allowed to have that information. I did want to know more about his background, and would have liked for there to be more discussion about that.

M. Lewen

The experience was very emotional for me. I prayed every day. I had my bible with me at the hotel.

I have read this declaration through. It it accurate and true to the best of my memory and belief, and I have had the opportunity to make any changes necessary. M. Lowen

WITNESS:
[signature] 9/23/03
[signature] 9/23/03

M. Lowen

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 11, 2022

Ms. Caroline Tillman
Capital Appeals Project
1024 Elysian Fields Ave
New Orleans, LA 70117

Re: Jessie D. Hoffman, Jr.
v. Timothy Hooper, Warden
Application No. 21A310

Dear Ms. Tillman:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on January 11, 2022, extended the time to and including March 4, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Jacob A. Levitan
Case Analyst