

immediate release. *Johnson v. Robey*, slip op. at 1-2. The habeas court denied the motion, finding that Johnson failed to demonstrate that his other remedies, such as a direct appeal, were inadequate. *Id.*, slip op. at 3. The Kentucky Court of Appeals affirmed, and the Kentucky Supreme Court denied discretionary review. See *Johnson v. Robey*, No. 2024-CA-0858 (Ky. Ct. App.), accessed at <https://appellatepublic.kycourts.net> (last visited June 1, 2026); *Johnson v. Robey*, No. 2024-SC-0512-DE, 2025 Ky. LEXIS 82, at *1 (Ky. Apr. 16, 2025).

Johnson petitioned for federal habeas relief in the Western District of Kentucky, asserting that his judgment is void because the trial court “correct[ed] his judgment without having jurisdiction.” The case was transferred to the Eastern District of Kentucky pursuant to 28 U.S.C. § 1404(a). A magistrate judge recommended that the claim be dismissed as procedurally defaulted because the state court rejected it on procedural grounds. Alternatively, the magistrate judge recommended dismissing the petition for failure to allege a violation of federal law. The district court adopted the recommendation over Johnson’s objections. Johnson filed a timely notice of appeal and requested a certificate of appealability. See Fed. R. App. P. 22(b)(1).

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); see *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To satisfy this standard, a petitioner must “demonstrat[e] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327. And where “the district court denies a habeas petition on procedural grounds,” the petitioner must also show that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

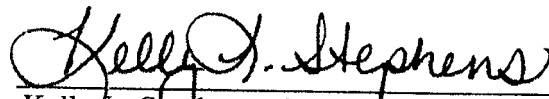
Johnson has not made the required showing. The district court held that Johnson’s petition was procedurally defaulted and failed on the merits. Although procedural default should ordinarily be addressed first, a court can deny a certificate of appealability on the merits where, as here, the resolution of the merits issues are “more apparent from the record and arguments.” *Slack*, 529 U.S. at 485; see also *Lambrix v. Singletary*, 520 U.S. 518, 524-25 (1997).

Reasonable jurists could not debate the district court's conclusion that Johnson failed to allege a cognizable federal habeas claim. A federal habeas court is "limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). In his petition, Johnson alleged that the state trial court lost jurisdiction to alter his sentence 10 days after his first judgment became final. But Johnson acknowledges that his claim is based on principles of "Kentucky law." Mot., R.1, PageID 13; *see, e.g., Commonwealth v. Gaddie*, 239 S.W.3d 59, 62 (Ky. 2007) ("[A] trial court loses jurisdiction to amend a judgment in a criminal case ten days after its entry"). Because Johnson's claim seeks to challenge a state court's ruling on state-law grounds, it is not cognizable in a habeas petition. *See Estelle*, 502 U.S. at 67-68; *Landrum v. Mitchell*, 625 F.3d 905, 913 (6th Cir. 2010) ("Issues of state law cannot form the basis for habeas relief." (emphasis omitted)).

Johnson now argues that this alleged state-law error violates the Due Process Clause. But he has failed to show how his due-process rights are implicated by the correction of the judgment to reflect the concurrent sentences he agreed to when he pleaded guilty—particularly since Johnson asked the Circuit Court to correct the judgment in the first place. *See Moreland v. Bradshaw*, 699 F.3d 908, 922-23 (6th Cir. 2012) (alleged state-law error rises to the level of a due-process violation only if it is "fundamentally unfair").

For these reasons, Johnson's application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 8, 2026
KELLY L. STEPHENS, Clerk

No. 25-6104

TREVOR JOHNSON,

Petitioner-Appellant,

v.

SHANNON BUTRUM, Warden,

Respondent-Appellee.

Before: HERMANDORFER, Circuit Judge.

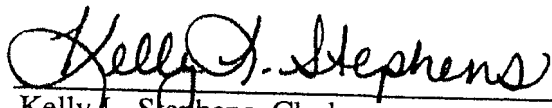
JUDGMENT

THIS MATTER came before the court upon the application by Trevor Johnson for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

TREVOR JOHNSON.

Petitioner,

y.

SHANNON BUTRUM.

Respondent.

No. 5:25-CV-220-DLB-HAI

RECOMMENDED DISPOSITION & ORDER

*** *** *** ***

On June 12, 2025, under the mailbox rule, state prisoner Trevor Johnson sent a filing entitled “Motion to Reopen Judgment Pursuant to Fed. Rules Civ. P Rule 60 b (4) & (6)” to the Western District of Kentucky, along with motions for leave to proceed *in forma pauperis* (D.E. 3) and for the appointment of counsel (D.E. 4). D.E. 1 at 19. After being sent a notice of deficiency from the Clerk of Court for the Western District of Kentucky, Johnson filed a petition using the proper form for a Writ of Habeas Corpus under 28 U.S.C. § 2254. D.E. 7. The case was transferred to the Eastern District of Kentucky and referred to the undersigned on July 1, 2025. D.E. 8, D.E. 10.

A state prisoner has a statutory right to collaterally attack his conviction or sentence. *West v. Bell*, 242 F.3d 338, 346 (6th Cir. 2001). A state prisoner may seek federal habeas corpus relief on the ground that he is being held in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a).

The Court recognizes the petitioner in proceeding *pro se*, without the assistance of an attorney. The Court construes *pro se* motions more leniently than other motions. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Castro v. United States*, 540 U.S. 375, 381-83 (2003).

Nevertheless, the undersigned recommends that Johnson's petition (D.E. 7) be denied on initial review because his claims are procedurally defaulted and his petition lacks any allegation of a violation of federal law.

I. Background

On August 31, 2007, according to the Kentucky eCourts docket for Fayette Circuit Court number 07-CR-00089, Johnson pled guilty to a number of felonies in Fayette County. Final Judgment Sentence of Imprisonment, *Commonwealth v. Johnson*, 07-CR-00089 (Fayette Cir. Ct. 2024). He was sentenced on October 26, 2007, to a 70-year term of imprisonment on these convictions. *Id.* The judge orally ordered that the 70-year sentence would run concurrently with the 30 years Johnson was serving on other sentences, consistent with the terms of his plea agreement. However, the written judgment entered a few days later stated the terms would run consecutively. *Id.* Johnson alleges he did not become aware of the issue until May of 2018, while sitting before the Kentucky Parole Board. D.E. 7 at 13.

Johnson tried multiple times without counsel to request the state courts to correct the discrepancy. On February 5, 2019, Johnson filed a *pro se* motion under Kentucky Rule of Criminal Procedure (RCr) 10.10 to clarify his judgment or correct his sentence. *Johnson*, 07-CR-00089. Eight days later, the Fayette Circuit Court entered an order "clarifying" that the sentence was to be served consecutively. *Id.* On January 6, 2021, Johnson filed a *pro se* motion to "uphold [his] plea agreement." Judgment (Other), *Johnson*, 07-CR-00089. The Fayette Circuit Court appointed counsel from the Department of Public Advocacy to represent Johnson. Order Appointing, *Johnson*, 07-CR-00089. On March 28, 2024, the trial court amended his judgment to state that the sentences would run concurrently, not consecutively. Judgment (Other), *Johnson*, 07-CR-00089. Johnson did not appeal.

At this point, Johnson's requested relief regarding his sentence was granted. Nonetheless, on April 19, 2024, Johnson filed a *pro se* state habeas corpus petition in Oldham Circuit Court. *Johnson v. Robey*, 24-CI-221 (Oldham Cir. Ct. June 11, 2024). In the motion, Johnson argued that the Fayette Circuit Court lost jurisdiction over the case shortly after the original judgment, and as such his sentence and the amended sentence were *void ab initio*. Corrected Order at 1-2, *Johnson*, 24-CI-221. The Oldham Circuit Court denied the motion. *Id.* Its opinion mentioned that the argument was meritless, but ultimately denied the motion as Johnson failed to exhaust the claim before seeking state habeas relief. *Id.* at 2-4. The Kentucky Court of Appeals affirmed the trial court's decision on October 2, 2024, in case 2024-CA-858-ME. The Kentucky Supreme Court then denied discretionary review on April 16, 2025, in case 2024-SC-0512.

Without further action on the state level, Johnson next filed the instant petition. He states one ground for relief, that

Mr. Johnson was sentence[d] by the Fayette Circuit Court to one-hundred (100) years; however, Mr. Johnson did not realize[d] his sentence was over the max until he saw the parole board and they informed him that he was serving a sentence of one-hundred years. Mr. Johnson then filed an RCr 10.10, asking the Fayette Circuit Court to correct his judgment but it declined. Mr. Johnson the filed another motion stating that the Commonwealth welched on his plea and that's when the Fayette Circuit Court decided it wanted to step and correct his judgment without having jurisdiction.

D.E. 7 at 5.

Because Johnson's sentences now run concurrently as he sought, the Court interprets Johnson's petition to concern the jurisdictional issue raised in his habeas petition. This is consistent with his original motion, which explains his legal allegation in a bit more detail. *See* D.E. 1 at 6 ("In the present case, the errors Petitioner alleges falls in both categories[,] jurisdictional errors and a denial of due process that deprived him of the charge and the opportunity to be heard causing the judgment to be void."). The original motion argues that a Kentucky criminal court's

jurisdiction to amend a judgment in a criminal case ends ten days after the judgment's entry RCr 10.10. *Id.* at 10-11.

II. Procedural Default

Procedural default is a threshold rule; courts generally consider procedural default before addressing the merits of a habeas petition. *Lovins v. Parker*, 712 F.3d 283, 294 (6th Cir. 2013). The procedural default rule is related to the statutory requirement that a habeas petitioner must exhaust any available state-court remedies before bringing a federal petition. *Id.* (citing 28 U.S.C. § 2254(b), (c)). The exhaustion and procedural default rules have the purpose of ensuring that the state courts have the opportunity to address federal constitutional claims “in the first instance” before the claims are raised in federal habeas proceedings. *Coleman v. Thompson*, 501 U.S. 722, 732 (1991).

Procedural default exists when the state court invokes an independent and adequate state procedural rule to dispose of the claim. *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017). Default exists even when the state court rules on the merits in the alternative. *Hanna v. Ishee*, 694 F.3d 596, 607 (6th Cir. 2012); *McBee v. Abramajtyts*, 929 F.2d 264, 267 (6th Cir. 1991). When the final reasoned state court opinion rules in the alternative and one of the alternatives is a state procedural bar, then the claim is defaulted. *Harris v. Reed*, 289 U.S. 255, 264 n. 10 (1989).

Here, the Kentucky courts found Johnson's state habeas petition procedurally barred. As the Oldham Circuit Court explained,

Pursuant to KRS 419.020, a writ of habeas corpus “shall be issued upon petition on behalf of anyone showing by affidavit probable cause that he is being detained without lawful authority or is being imprisoned when by law he is entitled to bail. The writ may be issued by any circuit judge on any day at any time and his power to issue such writs shall be coextensive with the Commonwealth.” Habeas proceedings are summary in nature, and appropriate where a judgment is void ab initio or detention is otherwise illegal. *Murrell v. Bottom*, 523 S.W.3d 405, 407 (Ky. 2017). The statute applies only to individuals who can demonstrate that they

are entitled to release from custody. *Graham v. O'Dea*, 876 S.W.2d 621, 622 (Ky. App. 1994). Further, a writ of habeas corpus is an extraordinary remedy which is only available when other relief is inadequate. *Gray v. Wingo*, 423 S.W.2d 517 (Ky.1968). Habeas corpus may not be invoked to obtain relief which properly should have been sought by appeal. *Pryor v. Thomas*, 361 S.W.2d 279, 280 (Ky.1962).

If Petitioner believed the Court had no jurisdiction to amend the judgment, on his own motion, he had other avenues available to remedy this mistake. Petitioner has failed to demonstrate the inadequacy of other remedies, such as a direct appeal or an RCr 11.42 motion before he filed this Writ of Habeas Corpus. See *Commonwealth v. Marcum*, 873 S.W.2d 207, 209-10 (Ky. 1994); *Wingo v. Ringo*, 408 S.W.2d 469, 470 (Ky. 1966). Petitioner has failed to explain why this issue was not raised in his direct appeal or later post-conviction proceedings and thus forecloses his ability to obtain habeas corpus relief.

As the Circuit Court amended the judgment to reflect the intent of the parties and pursuant to RCr 10.10 at Petitioner's own request and Petitioner failed to appeal said order, he cannot now approach this Court with a claim the underlying judgment is now void.

Order, *Johnson* at 6-8, 24-CI-221 6-8. This opinion was affirmed by the Kentucky Court of Appeals. Clearly, the state postconviction motion was rejected by the Oldham Circuit Court on state procedural grounds – that Johnson failed to exhaust other remedies, including direct appeal and a motion under RCr 11.42, prior to seeking habeas relief. The record is clear that Petitioner raised this habeas claim before the state courts, but the courts denied them on independent and adequate procedural grounds. Petitioner's claim is thus procedurally defaulted.

Typically, before recommending dismissal on procedural grounds, the Court grants the petitioner a further opportunity to respond to “accord the parties fair notice and an opportunity to present their positions.” *Day v. McDonough*, 547 U.S. 198, 210 (2006); accord *Shelton v. United States*, 800 F.3d 292, 294 (6th Cir. 2015). “The long-standing general rule is that a court may not dismiss an action without providing the adversely affected party with notice and an opportunity to be heard.” *Acosta v. Artuz*, 221 F.3d 117, 124 (2d Cir. 2000).

In this case, Johnson will have the opportunity to be heard by filing any appropriate objections to this Recommended Disposition. The Sixth Circuit in *Shelton* recognized that a petitioner's opportunity to object to a Magistrate Judge's Recommended Disposition satisfies the notice requirement. *Shelton*, 800 F.3d at 295.

III. Federal Ground for Relief

Johnson's petition also warrants denial upon initial review because it does not allege a violation of federal law. The petition asserts one ground of "void judgment." For supporting facts, Johnson states

Mr. Johnson was sentence by the Fayette Circuit Court to one-hundred (100) years; however, Mr. Johnson did not realize his sentence was over the max until he saw the parole board and they informed him that he was serving a sentence of one-hundred years. Mr. Johnson then filed an RCr 10.10, asking the Fayette Circuit Court to correct his judgment but it declined. Mr. Johnson then filed another motion stating that the Commonwealth welched on his plea and that's when the Fayette Circuit Court decided it wanted to step [in] and correct his judgment without having jurisdiction.

D.E. 7 at 5. At face value, it appears that Johnson is complaining of the judgment incorrectly stating his convictions were to run consecutively rather than concurrently. However, this was fixed by the Fayette Circuit Court and is moot.

The Court instead focuses on Johnson's claim that the "Fayette Circuit Court decided it wanted to step [in] and correct his judgment **without having jurisdiction.**" *Id.* (emphasis added). Johnson alleges in his original petition that "the Supreme Court of Kentucky has said repeatedly in the past that a trial court loses jurisdiction of a case ten (10) days after entry of a final order or judgment." D.E. 1 at 16 (citing *Commonwealth v. Marcum*, 873 S.W.2d 207 (Ky. 1994)).

Under Kentucky Rule of Civil Procedure (Cr) 59.05, "A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment." *See also* RCr 13.40 ("The Rules of Civil Procedure shall be

applicable in criminal proceedings to the extent not superseded by or inconsistent with these Rules of Criminal Procedure.”). Under Kentucky Rule of Criminal Procedure Rule 10.10, however, clerical errors made in judgments can be corrected by a court at any time. In his motion to amend the Fayette Circuit Court judgment, Johnson argued that the mistake in the terms of his sentence was a clerical error and thus the court could change its judgment at any time under RCr 10.10. The order granting the amendment was based on this rule.

The Court cannot properly adjudicate this claim under § 2254. Section 2254 relief is only available when the petitioner alleges he is being held in custody in violation of the Constitution, laws, or treaties of the United States. The avenue by which the Fayette Circuit Court amended Johnson’s judgment is a matter of state procedural rules and has been fully adjudicated by proper state authorities. As there is no alleged violation of federal law, this Court cannot provide habeas relief.

IV. Conclusion

Under 28 U.S.C. § 2243, “the district court has a duty to screen out a habeas corpus petition which is meritless on its face.” *Alexander v. N. Bureau of Prisons*, 419 F. App’x 544, 545 (6th Cir. 2011). “If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition.” Rules Governing Section 2254 Proceedings, Rule 4. Johnson’s 28 U.S.C. § 2254 petition is procedurally defaulted and lacks any issue of federal law. The undersigned therefore **RECOMMENDS** that the petition be **DENIED**.

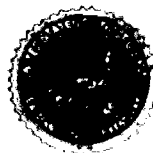
The undersigned further **RECOMMENDS** that no Certificate of Appealability issue. Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” *See also* Rule 11 of the Rules

Governing Section 2254 proceedings. When a case is dismissed on procedural grounds, a Certificate may only issue if the movant can show that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, the record is clear that Johnson’s claim is procedurally defaulted and his petition lacks any federal issue. No reasonable jurist would find the assessments on the merits above to be wrong or debatable; thus, no Certificate of Appealability should issue.

The Court directs the parties to 28 U.S.C. § 636(b)(1) for appeal rights and mechanics concerning this Recommended Disposition, issued under subsection (B) of the statute. *See also* Rules Governing Section 2254 Proceedings, Rule 8(b). Within **fourteen days** after being served with a copy of this decision, any party may serve and file specific written objections to any or all findings or recommendations for determination, *de novo*, by the District Judge. Failure to make a timely objection consistent with the statute and rule may, and normally will, result in waiver of further appeal to or review by the District Court and Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Wandahsega*, 924 F.3d 868, 878 (6th Cir. 2019).

Further, **IT IS HEREBY ORDERED THAT** Johnson’s motion to proceed *in forma pauperis* (D.E. 3) is **GRANTED**. His motion for appointment of counsel (D.E. 4) is **DENIED AS MOOT**.

This the 12th day of September, 2025.



Signed By:

Hanly A. Ingram

A handwritten signature in dark ink, appearing to read 'HAI', is written over the printed name 'Hanly A. Ingram'.

United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON

CIVIL CASE NO. 25-220-DLB-HAI

TREVOR JOHNSON

PETITIONER

v. ORDER ADOPTING RECOMMENDED DISPOSITION

SHANNON BUTRUM, Warden

RESPONDENT

* * * * *

I. INTRODUCTION

This matter is before the Court on the Recommended Disposition of United States Magistrate Judge Hanly A. Ingram (Doc. # 12), wherein he recommends that Petitioner Trevor Johnson's *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. # 1; see *also* Doc. # 7) be denied because his claims are procedurally defaulted and his petition lacks any allegation of federal law. Petitioner filed timely Objections to Judge Ingram's Recommended Disposition. (Doc. # 13). Respondent having filed no Response, and the time for submitting such response having expired, the Motion is now Ripe for the Court's consideration. For the following reasons, Judge Ingram's Recommended Disposition is **adopted** as the opinion of the Court, Petitioner's Objections are **overruled**, and the § 2254 petition is **dismissed with prejudice**.

II. FACTUAL AND PROCEDURAL HISTORY

On August 31, 2007, Petitioner Trevor Johnson pled guilty in Fayette Circuit Court to two counts of first-degree rape, one count of kidnapping, one count of second-degree assault, and one count of being a persistent felony offender. (Doc. #12; see *also* Doc. #

7). Two months later, Petitioner was sentenced to seventy years imprisonment, with the Fayette County judge orally ordering that the sentence would run concurrently with a thirty-year sentence Petitioner was already serving. (Doc. # 12 at 2). However, a written judgment entered several days after Petitioner's sentencing stated that Petitioner's seventy-year sentence would run consecutively with his previously-existing thirty-year sentence, for a total of a 100-year sentence. (*Id.*). Petitioner was not made aware of this discrepancy until he sat in front of the Kentucky Parole Board in 2018. (See *id.*; see also Doc. # 7).

Petitioner then made several attempts to correct his judgment and sentence. In 2019, Petitioner brought a *pro se* motion under Kentucky Rule of Criminal Procedure (RCr) 10.10, asking the Fayette Circuit Court to clarify his judgment or correct his sentence. (Doc. # 12 at 2). The Fayette Circuit Court entered an order eight days later ruling that Petitioner's sentence was to be served consecutively. (*Id.*). In 2021, Petitioner filed a motion to "uphold [his] plea agreement," which had the sentences running concurrently. (*Id.*). Three years later in 2024, the trial court amended his judgment to state that the sentences would run concurrently, as Petitioner had originally requested. (*Id.*). On April 19, 2024, Petitioner filed a state habeas corpus petition in Oldham Circuit Court, arguing that the Fayette Circuit Court lost jurisdiction over his case and therefore its judgment and his sentence should be void. (*Id.* at 3). The Oldham Circuit Court denied the motion, saying Petitioner had failed to exhaust the claim before seeking habeas relief. (*Id.*). The Kentucky Court of Appeals affirmed the trial court's decision, and the Kentucky Supreme Court denied discretionary review. (*Id.*).

Petitioner's final motion is the one made to this Court. Petitioner filed his petition seeking relief from his state court convictions under 28 U.S.C. § 2254. (Doc. # 1). Petitioner asked the Court to grant him relief of his sentence because the Fayette Circuit Court did not have jurisdiction over his claim at the time it rendered its judgment.¹ (Doc. # 1 at 5). Petitioner alleged that a Kentucky state court's jurisdiction to amend a judgment in a criminal case ends ten days after the judgment's entry. (*Id.* at 10–11). Petitioner alleged that not voiding the judgments against him and allowing the sentence to stay violates his rights under the Fourteenth Amendment. (*Id.* at 8).

On September 12, 2025, Judge Ingram issued a Recommended Disposition recommending that Petitioner's petition be denied. (Doc. # 12). Petitioner filed his Objections on September 26, 2025. (Doc. # 13). Respondent did not file a Response, and the time to submit one has now expired. Therefore, the Recommended Disposition is ripe for the Court's review.

III. RECOMMENDED DISPOSITION

After summarizing the relevant factual and procedural background, Judge Ingram first addressed the threshold issue of procedural default that courts must consider before addressing the merits of a habeas petition. (Doc. # 12 at 4 (citing *Lovins v. Parker*, 712 F.3d 283, 294 (6th Cir. 2013))). Judge Ingram established that the procedural default rule's purpose is to ensure that state courts have the opportunity to address federal constitutional claims "in the first instance" before the claims are raised in federal habeas

¹ Petitioner also claimed his sentence was over the maximum number of years allowed by Kentucky statute. (Doc. # 13 at 3). However, as Judge Ingram noted in his Recommended Disposition, Petitioner's sentences now run concurrently as Petitioner originally sought. (Doc. # 12 at 3). As such, Judge Ingram chose to address Petitioner's jurisdictional claims, which he described as consistent with his original motion. (*Id.*).

proceedings. (*Id.* (citing *Coleman v. Thompson*, 501 U.S. 722, 732 (1991))). Judge Ingram then explained that procedural default exists when a state court invokes an independent and adequate state procedural rule to dispose of the claim. (*Id.* (citing *Davila v. Davis*, 137 S. Ct. 2058, 2064 (2017))).

Judge Ingram concluded that the various Kentucky courts found Petitioner's state habeas petition was procedurally barred because Petitioner "had other avenues available" to remedy the Fayette Circuit Court's alleged mistake and failed to exhaust those remedies. (*Id.* at 5). Judge Ingram agreed with Kentucky courts' decisions, specifically pointing to Petitioner's failure to appeal the Fayette Court's decision and the Petitioner's failure to make a motion to vacate, set aside or correct sentence under RCr 11.42 as other remedies Petitioner should have sought before making a state habeas claim. (*Id.*). Judge Ingram concluded this claim was procedurally defaulted because the record clearly indicated Kentucky courts denied Petitioner's claim on independent and adequate procedural grounds. (*Id.*).

Judge Ingram then determined Petitioner's claim should also be denied because it does not allege a violation of federal law. (*Id.* at 6). Judge Ingram first dismissed Petitioner's claim that his claims were running consecutively, determining that the Fayette Circuit Court had corrected that issue. (*Id.* (determining that Petitioner's complaint of the judgment running consecutively not concurrently "was fixed by the Fayette Circuit Court and is moot."))). Next, Judge Ingram focused on Petitioner's claim that the Fayette Circuit Court did not have jurisdiction to correct his judgment. (*Id.*). Judge Ingram noted that Kentucky Rule of Civil Procedure (Cr) 59.05 states that a motion to amend a judgment, or to vacate a judgment and enter a new one, should be served not later than ten days

after entry of the final judgment. (*Id.*). Additionally, Judge Ingram established that under RCr 10.10, clerical errors made in judgments can be corrected by a court at any time. (*Id.* at 7). Judge Ingram noted that Petitioner based his motion to amend the Fayette Circuit Court judgment on an alleged clerical error, meaning the state court could change its judgment at any time under RCr 10.10. (*Id.*). On this basis, Judge Ingram concluded that the method by which the court changed Petitioner's judgment was not a violation of any federal laws and was rather a proper adjudication of state procedural rules by proper state authorities. (*Id.*).

To conclude, Judge Ingram recommended the petition be denied because it is procedurally barred and states no violation of federal law. (*Id.*). Judge Ingram further recommended that no Certificate of Appealability issue because no reasonable jurist would find either of the contentions—that the claim was procedurally defaulted and that there were no federal issues presented—to be wrong or debatable. (*Id.* at 8).

IV. ANALYSIS

A. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(B), a district judge may “designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition . . . of any motion.” Under Federal Rule of Criminal Procedure 59(b)(1)(2), following a magistrate judge's recommended disposition, a party has fourteen days to file “specific written objections to the proposed findings and recommendation.” The district judge is required to “consider de novo any objection to the magistrate judge's recommendation,” and “may accept, reject, or modify the recommendation.” Fed. R. Crim. P. 59(b)(3); *see also* 28

U.S.C. § 636(b)(1)(C). Failure to object is considered waiver of the party's right to review. Fed. R. Crim. P. 59(b)(2).

The purpose of objections is to allow “the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985) (footnote omitted). Therefore, objections to the recommended disposition must be specific—they may not be “vague, general, or conclusory . . . [as such objections are] tantamount to a complete failure to object.” *Fields v. Lapeer 71-A District Court Clerk*, 2 F.App’x 481, 482–83 (6th Cir. 2001). “Moreover, ‘an “objection” that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an “objection” as that term is used in this context.’” *United States v. Vanover*, No. 2:10-cr-14, 2017 WL 1356328, at *1 (E.D. Ky. Apr. 11, 2017) (quoting *VanDiver v. Martin*, 304 F.Supp.2d 934, 938 (E.D. Mich, 2004)).

B. Petitioner’s Objections

Petitioner raised two principal objections to Judge Ingram’s Recommended Disposition. First, Defendant contends that the Kentucky courts’ and Judge Ingram’s determination that his claim is procedurally defaulted is “misplaced” because the Kentucky courts and Judge Ingram failed to understand the difference between a federal habeas claim and a state habeas claim. (Doc. # 13 at 2–3). He further argues his case is not procedurally defaulted because he followed the rules Kentucky set when making his motions. (*Id.* at 3). Further, he argues that the case is not procedurally defaulted because it is contrary to *Jackson v. Virginia*, 443 U.S. 307 (1979) and *In Re Winship*, 397 U.S. 358 (1970).

This argument amounts to little more than a disagreement with Judge Ingram's findings. Petitioner does not explain if he exhausted all the state remedies available to him, nor how he exhausted all the remedies available to him. He does not explain why he chose not to bring a direct appeal or other forms of relief before bringing his state habeas claim. He also does not explain how Judge Ingram's findings contrast with *Jackson* or *Winship*. He merely states that his claim should not be procedurally defaulted because it should not be procedurally defaulted. His circular logic strains credulity. Without more, Petitioner's objections are no more than what he already stated in his original petition.

The most prevalent of Petitioner's objections is that the Fayette Circuit Court lacked jurisdiction to enter his judgment, and that his judgment should be void as a result. (*Id.* at 1). He reiterates his previously made argument that because ten days had passed since the entering of his judgment, the Fayette Circuit Court had no jurisdiction, which renders his judgment void. (*Id.*). Petitioner's main support for his claim is that in 2021, when one of Petitioner's prior motions were before the state courts and prior to the Fayette Circuit Court changing Petitioner's sentence, the Commonwealth's Attorney argued that Petitioner's sentence being served consecutively was deliberate, and not a clerical error. (*Id.* at 3). All this, Petitioner argues, amounts to a violation of his right to due process under the Fourteenth Amendment. (*Id.* at 3–4). Notably, Petitioner does not address that the Fayette Circuit Court corrected his sentence to reflect his original request that his sentence run concurrently.

Petitioner effectively repeats the same line of reasoning from his original petition and does not give any new context to how he believes Judge Ingram erred. He does not

state any legal basis for his objections and maintains the same argument that Judge Ingram addressed in his Recommended Disposition. He also does not explain how his rights under the Constitution have been violated, just that they have. Conclusory statements like Petitioner's are not enough to sustain an objection to a magistrate judge's report. See *Vanover*, 2017 WL 1356328, at *1. Accordingly, Petitioner's objections are **overruled**, and his petition is **denied** as being procedurally defaulted and without any articulated issue of federal law.

C. Certificate of Appealability

Finally, the Court will consider Judge Ingram's recommendation that no Certificate of Appealability issue. Petitioner briefly states that fair-minded jurists could disagree as to whether his arguments are inconsistent with Supreme Court decisions. (Doc. # 13 at 1). Given the evidence in the record that Petitioner's claim is procedurally defaulted and the absence of any articulable federal issue, no reasonable jurist would find Judge Ingram's assessments on the merits to be wrong or debatable. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, no Certificate of Appealability will issue with respect to this Order.

V. CONCLUSION

For the reasons stated, Petitioner has failed to raise any meritorious legal objections to Judge Ingram's Recommended Disposition. Accordingly,

IT IS ORDERED as follows:

- (1) The Magistrate Judge's Recommended Disposition (Doc. # 12) is **ADOPTED** as the Opinion of the Court;

- (2) Petitioner's Objections (Doc. # 13) to the Recommended Disposition are **OVERRULED**;
- (3) Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. # 7) is **DENIED**;
- (4) The Court determines there would be no arguable merit for appeal in this matter, and therefore, **NO CERTIFICATE OF APPEALABILITY SHALL ISSUE**;
- (5) This matter is **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket; and
- (6) An accompanying Judgment shall be entered contemporaneously herewith.

This 21st day of October, 2025.



Signed By:

David L. Bunning

DB

Chief United States District Judge

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