CLD-176 April 12, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1102**

BARRY SOLDRIDGE, Appellant

vs.

SUPERINTENDENT HUNTINGDON SCI, ET AL.

(E.D. PA. CIV. NO. 5-16-cv-01820)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted are:

(1) Appellant's original application for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) Appellant's amended application for a certificate of appealability; and

(3) Appellant's unopposed motion to strike original application for a certificate of appealability

in the above captioned case.

Respectfully,

Clerk

ORDER

Appellant's unopposed motion to strike his original application and to consider instead his amended application for a certificate of appealability is granted. Appellant's amended motion for a certificate of appealability is denied. For substantially the reasons given by the District Court, appellant has not made a substantial showing of the denial of a constitutional right nor shown that reasonable jurists would find the correctness of the procedural aspects of the District Court's determination, including that an evidentiary hearing was unwarranted, debatable. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: June 4, 2018
tmm/cc: Jeffrey M. Brandt, Esq.
Matthew M. Robinson, Esq.
Rebecca J. Kulik, Esq.

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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601 MARKET STREET
PHILADELPHIA, PA 19106-1790
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June 4, 2018

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RE: Barry Soldridge v. Superintendent Huntingdon SCI, et al
Case Number: 18-1102
District Court Case Number: 5-16-cv-01820

ENTRY OF JUDGMENT

Today, **June 04, 2018** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/Caitlyn/tmm, Case Manager
267-299-4956

cc: Ms.Kate Barkman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY SOLDRIDGE,	:	
Petitioner,	:	
v.	:	
	:	**Civ. No. 16-1820**
THE DISTRICT ATTORNEY	:	
OF THE COUNTY OF	:	
NORTHHAMPTON, et al.,	:	
Respondents.	:	

N O T I C E

On April 13, 2016, state prisoner Barry Soldridge, Jr. filed a *pro se* § 2254 Petition (Doc. No. 1) challenging two consecutive life sentences on the following grounds: involuntariness of waiver, judicial and attorney misconduct, and due process violations. (See Doc. No. 1); 28 U.S.C. § 2254. I referred the matter to Magistrate Judge Richard A. Lloret, who has recommended denying relief. (Doc. No. 11.) Petitioner submitted objections, which largely rehash the arguments made in his Petition. (See Doc. No. 15.) I will overrule Petitioner's objections, adopt Judge Lloret's Report and Recommendation, and deny the Petition.

I. Background

On October 13, 2011, a Northampton County jury convicted Petitioner of two counts of first-degree murder. See Commonwealth v. Soldridge, CP-48-CR-003940-2010 No. 3940-2010 (Northampton Ct. Com. Pl). After the guilty verdict, the Commonwealth agreed to withdraw its Motion for Aggravating Circumstances and not to seek the death penalty—instead seeking two consecutive life terms of imprisonment—if Petitioner agreed to waive his appellate and PCRA rights. (Written Agreement Colloquy 1–11, Doc. No. 6-1; Commonwealth v. Soldridge, No. 1396 EDA 2015, at 1–2 (Pa. Super. Oct. 15, 2015), Doc. No. 6-1.) Petitioner agreed and executed a written waiver of his appellate rights. (See Written Agreement Colloquy 1–11, Doc.

No. 6-1.) The trial court conducted an oral colloquy of Petitioner before accepting his waiver. See October 14, 2011 Hr'g Tr., Commonwealth v. Soldridge, No. 2010-3940 (Northampton Ct. Com. Pl.). Petitioner was sentenced on October 14, 2011. (Id.)

On October 3, 2012, Petitioner filed a *pro se* PCRA Petition, alleging, *inter alia*, that the waiver of his appellate and collateral attack rights was not knowing or voluntary. (Doc. No. 6-1 at 65); see 42 Pa. C.S. §§ 9541–9546. On November 26, 2012, the PCRA Court denied relief. (See Order, Commonwealth v. Soldridge, No. 2010-3940 (Northampton Ct. Com. Pl., Nov. 26, 2012.) On July 24, 2013, the Superior Court remanded for appointment of counsel. (Doc. No. 6-1 at 65); Commonwealth v. Soldridge, 82 A.3d 1077, 2013 Pa. Super. LEXIS. 3325 (Pa. Super. Ct., 2013). On February 5, 2015, Defendant filed a counseled petition seeking to have his PCRA rights reinstated. (Doc. No. 6-1, 65.) The PCRA Court denied the petition on April 17, 2015. Id. The Pennsylvania Superior Court affirmed. (Doc. No. 6-1 at 64–76.)

On April 13, 2016, Soldridge filed the instant Petition, which includes the same voluntariness claims he raised in state court, as well as claims of ineffective assistance of trial and PCRA counsel, and that "the prosecutor, trial counsel, and the trial court conspired to commit a variety of acts of misconduct" leading to his conviction. (R&R, Doc. No. 11; Doc. No. 1.) Judge Lloret recommended denying relief on September 21, 2016. (See Doc. No. 11.) On October 6, 2016, Petitioner objected to the Report and Recommendation. (See Doc. No. 15.) Noting that "Petitioner's objections are substantially the same as the claims in his initial filing," the Commonwealth declined to respond, relying on its answer and Judge Lloret's Report and Recommendation. (Doc. No. 17.)

II. Legal Standards

In reviewing a Report and Recommendation, I must "make a *de novo* determination of

those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). I may "accept, reject, or modify, in whole or in part" these findings and recommendations. Id.; Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001). As to those portions to which no objections have been made, I must "satisfy [myself] that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b) Advisory Committee's Note.

I may grant habeas relief only if the state court's merits decision: (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law"; or (2) if the decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). A decision is "contrary to" clearly established federal law if the state court "applies a rule different from the governing law" or decides a case differently on "materially indistinguishable facts." Bell v. Cone, 535 U.S. 685, 694 (2002). A decision is an unreasonable application of clearly established federal law when it correctly identifies the governing legal principle but "unreasonably applies that principle to the facts of the prisoner's case." Lockyer v. Andrade, 538 U.S. 63, 75 (2003).

A defendant may waive rights conferred by a federal statute or the Constitution, if the waiver is a voluntary, knowing and "intelligent act[ ] done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. 742, 748 (1970); Town of Newton v. Rumery, 480 U.S. 386, 392–393 (1987). "The right to appeal in a criminal case is among those rights that may be waived." United States v. Mabry, 536 F.3d 231, 236 (3d Cir. 2008) (citing Jones v. Barnes, 463 U.S. 745, 751 (1983)). A knowing and voluntary waiver of appeal is valid "unless [it] work[s] a miscarriage of justice." United States v. Khattak, 273 F.3d 557, 563 (3d Cir. 2001)

III. Discussion

Objection 1: Knowing and Voluntary Waiver

Petitioner objects to Judge Lloret's ruling that Petitioner's waiver was knowing and voluntary. I disagree and will overrule his objection.

I agree that the Superior Court—which found that Petitioner had knowingly and voluntarily waived his direct and collateral appeal rights—did not act contrary to clearly established federal law. (R&R 5.) The Court reviewed Petitioner's written and oral colloquy under a state law standard that encompasses the federal standard. Commonwealth v. Soldridge, No. 1396 EDA 2015 (Pa. Super. Oct. 15, 2015). Compare Commonwealth v. Baker, 72 A.3d 652, 667–668 (Pa. Super. 2013) (to be a knowing, voluntary, express waiver of collateral review the defendant must have made a "free and unconstrained choice" after consultation with counsel, with knowledge of the "'essential ingredients' of the right he or she is waiving," and the trial court must make sure the waiver is informed and voluntary on the record) with Brady, 397 U.S. at 748 (waivers of rights must be voluntary, "knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences") and Mabry, 36 F.3d at 238 (review of a written agreement and colloquy helps evaluate the knowing and voluntary nature of a waiver). Accordingly, the Superior Court did not apply "a rule different from the governing law." Bell v. Cone, 535 U.S. 685, 694 (2002).

Nor did the Superior Court unreasonably apply the governing legal principle to the facts of Petitioner's case. See Lockyer v. Andrade, 538 U.S. 63, 75 (2003). The written colloquy—signed by Petitioner, his Counsel, and the District Attorney—explained that Petitioner waived, *inter alia*, his right to seek appellate or collateral review, including relief under the PCRA and federal habeas laws. (Written Agreement Colloquy, ¶ 11 (b)–(f), Doc. No. 6-1, 1–13.) The

Superior Court thoroughly reviewed this written agreement and the oral waiver colloquy conducted at sentencing. (Doc. No. 6-1 at 67–76.) It found that the Trial Court sufficiently reviewed whether Petitioner's waiver was informed and voluntary and whether Petition understood the consequences of waiving his appellate and collateral rights, as well as his rights to have the jury decide his sentence at the penalty phase. (Id.) My independent review of the colloquy supports this conclusion. (See R&R 5–6; October 14, 2011 Hr'g Tr., 3:10–4:3 (detailing agreement with Commonwealth); Tr. 7:23–10:24, 13:1–22 (describing the penalty phase and consequences of Petitioner's waiver of right to have the Jury decide his sentence); Tr. 10:25–11:1 (confirming that Petitioner reviewed the agreement with Counsel); Tr. 14:20–17:3 (overview of appellate and collateral rights which Petitioner waived, including right to file for relief under the PCRA or federal habeas law).)

Petitioner alleges that he could not have knowingly or voluntarily entered into this waiver, as he was anxious, under psychological duress, and inadequately advised by his counsel. (Doc. No. 15 at 2–3.) This allegation is flatly contradicted by the trial court's exploration of Petitioner's competency, Petitioner's testimony at sentencing, and Petitioner's certifications within the Written Agreement. (Tr. 7: 10–22, 11: 16–17 (reviewing Petitioner's competency and finding that he was "lucid and intelligent"); Tr. 11: 9–15 (when asked about the Agreement, Petitioner stated "I understand it. It is clear. . . . It is clear. It is very clear."); Doc. No. 6-1, 67–76, at ¶¶ 14–18 (certifying that he had reviewed the Agreement with Counsel, that it was fully explained, and that he understood the terms).) Accordingly, the Superior Court was not unreasonable when it found that Petitioner's waiver was knowing and voluntary. See United States v. Mabry, 536 F.3d 231, 238–239 (3d Cir. 2008); Jamison v. Klem, 544 F.3d 266, 269–

270 (3d Cir. 2008) (inquiry into the knowing and voluntary nature of a plea involved review of the written plea agreement, and transcripts from a change of plea hearing and sentencing).

Finally, Petitioner argues that enforcing the waiver would cause a miscarriage of justice. (Doc. No. 15 at 4 (citing to United States v. Khattak, 273 F.3d 557, 563 (3d Cir. 2001).) Plaintiff concedes that "an error amounting to a miscarriage of justice [which] may invalidate a waiver" is an "unusual circumstance." (Doc. No. 15); Khattak, 273 F.3d 562–563 (before "relieving the defendant of a waiver," Courts should consider "[t]he clarity of the error, its gravity, its character . . . the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result."). Such an unusual circumstance may arise when "counsel was ineffective or coercive in negotiating the very [ ] agreement that contained the waiver." Mabry, 36 F.3d at 243. I have already determined that Petitioner's waiver was not coerced but knowing and voluntary. See United States v. Wilson, 429 F.3d 455 (3d Cir. 2005).

Petitioner agrees that a miscarriage of justice would arise because "he has effectively been deprived his rights to challenge the legitimacy of his convictions and sentences . . . solely because counsel erroneously advised him" on issues related to the penalty phase: the likelihood of a death sentence, the presence of mitigating factors, and the availability of arguing ineffective assistance of counsel through collateral review. (Doc. No. 15 at 4.) This is little more than a restatement of his contention that his waiver was not knowing and voluntary.

The record reflects not only that counsel reviewed these issues with Petitioner when explaining the written waiver agreement, but that the trial court confirmed that the Petitioner understood these same issues during the oral colloquy respecting the waiver. (Doc. 6-1, ¶¶ 1–8,

11(c), (f); Tr. 7:23–10:24, 15:4–25.) In these circumstances, Petitioner has not made out a miscarriage of justice.

Accordingly, I will overrule Petitioner's objections that his waiver was unknowing and involuntary, and that its enforcement would work a miscarriage of justice.

Objection 2: Petitioner's Remaining Claims are Moot

Petitioner objects to Judge Lloret's ruling that Petitioner's remaining issues are moot. (Doc. No. 15, 6.) I disagree and will overrule his objection.

Petitioner does not address Judge Lloret's mootness determinations. Rather, Petitioner argues that these claims are not procedurally defaulted, given that his PCRA counsel did not brief the state court on these additional claims. (Doc. No. 15 at 6.) I need not address whether these claims are procedurally defaulted, having found that Petitioner's waiver remains valid. Because I am enforcing Petitioner's waiver of his right to appeal and to seek collateral review in federal court, I will not review the merits of Petitioner's other claims. See United States v. Gwinnett, 483 F.3d 200, 203(3d Cir. 2007) (declining to review the merits of defendant's appeal after concluding that she knowingly and voluntarily waived her right to appeal).

IV. Conclusion

For these reasons, I will overrule Petitioner's objections, adopt Judge Lloret's Recommendation, and dismiss the Petition without an evidentiary hearing. An appropriate Order follows.

/s/ Paul S. Diamond

December 14, 2017 Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY SOLDRIDGE,	:	
Petitioner,	:	
v.	:	
	:	**Civ. No. 16-1820**
THE DISTRICT ATTORNEY	:	
OF THE COUNTY OF	:	
NORTHHAMPTON, et al.,	:	
Respondents.	:	

O R D E R

AND NOW, this 14th day of December, 2017, upon consideration of the Petition for Habeas Relief under 28 U.S.C. § 2254 (Doc. No. 1), the Commonwealth's Answer in Opposition (Doc. No. 6), Petitioner's Reply and Supplemental Documents (Doc. Nos. 9, 10), Judge Lloret's Report and Recommendation (Doc. No. 11), Petitioner's Objections (Doc. No. 15), all other related submissions, and after a complete and independent review of the record, it is hereby **ORDERED** that:

1. Petitioner's Objections (Doc. No. 15) are **OVERRULED**;
2. The Report and Recommendation (Doc. No. 11) is **APPROVED** and **ADOPTED**;
3. The Petition for Writ of Habeas Corpus (Doc. No. 1) is **DENIED** and **DISMISSED**;
4. A Certificate of Appealability shall **NOT ISSUE** under 28 U.S.C. § 2253(C)(1)(A) because Petitioner has not demonstrated that "reasonable jurists"

would find my "assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000); and

5. The Clerk of Court shall **CLOSE** this action.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY SOLDRIDGE, Petitioner,	:	CIVIL ACTION
v.	:	
THE DISTRICT ATTORNEY OF THE COUNTY OF NORTHHAMPTON , et al., Respondents	:	No. 16-CV-01820

REPORT AND RECOMMENDATION

Richard A. Lloret
U.S. Magistrate Judge

September 21, 2016

Before me is the petition for writ of habeas corpus of Petitioner Barry Soldridge ("Soldridge"). Doc. No. 1. On October 13, 2011, Soldridge was convicted by a jury of two counts of first-degree murder for shooting and killing his ex-girlfriend and her current boyfriend. Doc. No. 6, at 2. Following the guilty verdict, but prior to the penalty phase, "the Commonwealth agreed not to seek the death penalty and [Soldridge] accepted a sentence of two consecutive life terms in return for his waiver of all appellate and PCRA rights." *Commonwealth v. Soldridge*, No. 1396 EDA 2015, at 1-2 (Pa. Super. Oct. 15, 2015). Soldridge now contends that his waiver of direct and collateral appeal rights was neither knowing nor voluntary. *See* Doc. No. 1, at 8-9. Soldridge also contends that PCRA counsel was ineffective; and, that the prosecutor, trial counsel, and the trial court conspired to commit a variety of acts of misconduct that cumulatively led to his conviction and his allegedly coerced waiver of direct and collateral appeal rights. *See generally*, Doc. No. 9. The Commonwealth of Pennsylvania opposes Soldridge's petition, arguing that his waiver of direct and collateral appeal rights was knowing and voluntary. Doc. No. 6. As discussed in detail below, I find the state courts' determination that

Soldridge knowingly and voluntarily waived his direct and collateral appeal rights was neither contrary to, nor an unreasonable application of clearly established Supreme Court precedent. Because Soldridge knowingly and voluntarily waived his direct and collateral appeal rights, I find all other issues raised by Soldridge to be moot. I respectfully recommend that his petition be denied and dismissed with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

In ruling on Mr. Soldridge's PCRA appeal, the Pennsylvania Superior Court provided the following factual and procedural background regarding the agreement reached between Soldridge and the Commonwealth following the guilty verdict but prior to the commencement of the penalty phase:

> Following a jury trial, [Mr. Soldridge] was found guilty of two counts of first degree capital murder. Prior to sentencing, the Commonwealth agreed not to seek the death penalty and [Mr. Soldridge] accepted a sentence of two consecutive life terms in return for his waiver of all appellate and PCRA rights. He was sentenced on October 14, 2011.
>
> On October 3, 2012, [Mr. Soldridge] filed a *pro se* PCRA petition. The court denied the petition and [Mr. Soldridge] appealed. This Court vacated the order denying PCRA relief and remanded to the PCRA court with directions to appoint counsel to represent [Mr. Soldridge]. *Commonwealth v. Soldridge, Jr.*, 19 EDA 2013 (unpublished memorandum at 2) (Pa. Super. July 24, 2013). On August 26, 2013, counsel was appointed. [Mr. Soldridge] filed a request for alternate counsel on November 3, 2014. On November 4, 2014, present counsel was appointed. On February 5, 2015, counsel filed a PCRA petition contending Appellant's waiver of all of his appellate and PCRA rights was not free and voluntary. On February 25, 2015, the PCRA court held a hearing on the petition. On April 17, 2015, the petition was denied.

Commonwealth v. Soldridge, No. 1396 EDA 2015 (Pa. Super. Ct. 2015).

The Pennsylvania Superior Court affirmed the trial court's order denying Soldridge's PCRA petition. The Superior Court found that Soldridge knowingly and voluntarily waived his direct and collateral appeal rights based upon the extensive

colloquy record. *Id*. Soldridge appealed the ruling, and the Pennsylvania Supreme Court denied Soldridge's petition for allowance of appeal on March 29, 2016. *Commonwealth v. Soldridge*, 871 MAL 2015 (Pa. 2016). This timely habeas petition followed.

DISCUSSION

In his habeas petition, Soldridge argues that he involuntarily waived his appellate rights because his attorney coerced him and failed to fully explain the repercussions of his waiver. Doc. No. 1, at 12. Construing Soldridge's *pro se* petition liberally as I must, I find that Soldridge is alleging that the Superior Court's ruling that Soldridge knowingly and voluntarily waived his direct and collateral appeal rights is contrary to, or an unreasonable application of, United States Supreme Court precedent. *See Rainey v. Varner*, 603 F.3d 189, 198 (3d Cir. 2010) ("A habeas corpus petition prepared by a prisoner without legal assistance may not be skillfully drawn and should thus be read generously.") Soldridge also argues that his petition should be granted based upon a variety of allegations of judicial and prosecutorial misconduct, and ineffective assistance of counsel. The Commonwealth argues that the written and oral colloquies of record plainly evidence that Soldridge did, in fact, knowingly and voluntarily waive his direct and collateral appeal rights, and that his habeas petition should be denied. Doc. No. 6, at 5. As discussed below, I find Soldridge's habeas petition to be without merit.

Under the AEDPA, if a petitioner's claims were "adjudicated on the merits" in state court, I may grant habeas relief only if the state court decision was: (1) contrary to, or involved an unreasonable application of, clearly established Federal law;" or, (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). A decision is "contrary to" clearly established federal law if the state court "applies a rule different from the governing law"

or decides a case differently on "materially indistinguishable facts." *Bell v. Cone*, 535 U.S. 685, 694 (2002). If the reasoning and the result do not contradict a holding of the Supreme Court, then the decision is not contrary to clearly established federal law. *Early v. Packer*, 537 U.S. 3, 8 (2002). A decision is an unreasonable application of clearly established federal law when it correctly identifies the governing legal principle but "unreasonably applies that principle to the facts of the prisoner's case." *Lockyer v. Andrade*, 538 U.S. at 63, 75 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362, 413 (2000)).

A. The Superior Court's ruling that Soldridge knowingly and voluntarily waived his direct and collateral appeal rights is neither contrary to, nor an unreasonable application of, Supreme Court precedent.

The Supreme Court has held that criminal defendants may waive constitutional and statutory rights as long as the waiver is done with knowledge of the consequences of that waiver. *See Town of Newtown v. Rumery*, 480 U.S. 386, 393 (1987); *United States v. Mabry*, 536 F.3d 231, 236 (3d Cir. 2008); *see also Brady v. United States*, 397 U.S. 742, 752-53 (1970) (plea bargaining does not trigger a Constitutional violation even though the plea waives various constitutional rights). The Third Circuit has described a criminal defendant's waiver of constitutional and statutory rights as follows:

> Criminal defendants may waive both constitutional and statutory rights, provided they do so voluntarily and with knowledge of the nature and consequences of the waiver. The right to appeal in a criminal case is among those rights that may be waived. We have acknowledged the clear precedent validating waivers of basic rights, even in criminal cases. Noting the benefits of such waivers to the defendant, government and court system, we have refused to find waivers of appeal rights violative of public policy. Accordingly, we have been willing to enforce such waivers, provided that they are entered into knowingly and voluntarily and their enforcement does not work a miscarriage of justice.

United States v. Mabry, 536 F.3d 231, 236-37 (3d Cir. 2008) (citations and footnotes omitted).

Here, the Superior Court's determination that Soldridge knowingly and voluntarily waived his direct and collateral appeal rights was neither contrary to, nor an unreasonable application of, clearly established federal law. The Superior Court reviewed Soldridge's claim under a state law standard that encompasses the federal standard:

> "For a waiver to be knowing, the defendant must be made aware of the 'essential ingredients' of the right he or she is waiving to ensure there is an understanding of the significance of what he or she is giving up.
>
> * * *
>
> To be voluntary, the waiver must be 'the free and unconstrained choice of its maker.' This requires a showing that the defendant, after consultation with counsel (if any) and consideration of the right he or she is forfeiting, has decided to waive the right at issue.
>
> Finally, for there to be an express waiver of a right, the trial court must conduct a colloquy on the record to ensure the decision to waive the right is informed and voluntary."

Commonwealth v. Soldridge, No. 1396 EDA 2015, at 3 (Pa. Super. Oct. 15, 2015) (quoting *Commonwealth v. Baker*, 72 A.3d 652, 667-68 (Pa. Super. 2013) (citations omitted)). The Superior Court then detailed the painstaking written and oral colloquies given to Soldridge by the trial court to ensure that his waiver of rights was both knowing and voluntary. *See Soldridge*, No. 1396 EDA 2015, at 4-12 (quoting sentencing hearing transcript). In both colloquies, Soldridge affirmed, among other things, that he understood that he was giving up all of his direct and collateral appeal rights "now and forever[.]" *Id.* at 9. Soldridge also affirmed that he had agreed to never "seek or have filed on my behalf . . . any . . . Federal collateral appeal of my conviction or sentence on this agreement . . . ." *Id.* at 10. Finally Soldridge agreed that "no other Court will review

my case after today[.]" *Id.* at 11. Importantly, in addition to his express written and oral waiver of all direct and collateral appeal rights, Soldridge agreed that he had "read this entire [written] agreement and discussed it with my counsel and I have no question regarding the terms and conditions of the agreement. I understand exactly what is written in it." *Id.* at 12.[1]

Based upon this record, I find that Superior Court of Pennsylvania's determination that Soldridge knowingly and voluntarily waived his direct and collateral appeal rights is neither contrary to, nor an unreasonable application of, Supreme Court precedent. I respectfully recommend that Soldridge's petition should be denied as to this ground.

B. The remaining issues raised by Soldridge are moot.

In addition to his claim of an involuntary and unknowing waiver of his direct and collateral appeal rights, Soldridge contends that trial counsel, the prosecutor, and the trial court conspired to convict him and deprive him of rights through judicial bias and misconduct, ineffective assistance of counsel, the violation of due process, and "attorney and prosecutorial misconduct." Doc. No. 1, at 12-13; *see generally* Doc. No. 9. The Commonwealth did not address these arguments in its opposition brief as the arguments were not fully raised by Soldridge until his reply brief. *Compare* Doc. No. 1, at 12-13 *with* Doc. No. 9. I find all of Soldridge's remaining arguments to be without merit.

Soldridge knowingly and voluntarily waived *all* direct and collateral appeal rights in exchange for the Commonwealth not seeking the death penalty following Soldridge's

[1] When asked if Soldridge had any questions about the written colloquy during the oral colloquy, he stated "I understand it. It is clear." *See id.*, at 7 (quoting N.T. 10/14/11 Sentencing Hrg., at 7-10).

conviction on two counts of first degree murder. Most pertinent here, Soldridge knowingly and voluntarily waived the right to raise any issues before a federal court through a habeas petition. *See Soldridge*, No. 1396 EDA 2015, at 10. Accordingly, I find the remaining issues raised by Soldridge to be moot.[2] Soldridge's habeas petition should be denied as to these remaining claims.

RECOMMENDATION

The Pennsylvania Superior Court's determination that Soldridge knowingly and voluntarily waived all direct and collateral appeal rights is neither contrary to, nor an unreasonable application of, Supreme Court precedent. Accordingly, I respectfully recommend that Soldridge's petition be denied and dismissed with prejudice. In addition, I recommend that no certificate of appealability issue, because "the applicant has [not] made a substantial showing of the denial of a constitutional right[,]" under 28 U.S.C. § 2253(c)(2), since he has not demonstrated that "reasonable jurists" would find my "assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see United States v. Cepero*, 224 F.3d 256, 262-63 (3d Cir. 2000), *abrogated on other grounds by Gonzalez v. Thaler*, 32 S. Ct. 641 (2012).

Parties may object to this report and recommendation under 28 U.S.C. § 636(b)(1)(B) and Local Rule of Civil Procedure 72.1 within fourteen (14) days after being served with the report and recommendation. An objecting party shall file and serve written objections that specifically identify the portions of the report or

[2] Even if these issues were not moot, they would be unexhausted and procedurally defaulted as Soldridge never raised them in state court and could not do so now. *See Toulson v. Beyer*, 987 F.2d 984, 987 (3d Cir. 1993).

recommendations to which objection is made, and explain the basis for the objections. A party wishing to respond to objections shall file a response within 14 days of the date the objections are served.

BY THE COURT:

s/ Richard A. Lloret
HON. RICHARD A. LLORET
U.S. Magistrate Judge