UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1895

JAMES R. HOUSEHOLDER, JR.,
Appellant

v.

SUPERINTENDENT GREENE SCI;
ATTORNEY GENERAL PENNSYLVANIA

(D.C. Civ. No. 2:20-cv-01115)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant James Householder in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of

the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: September 27, 2022
PDB/cc: James R. Householder, Jr.
Judith P. Petrush, Esq.

DLD-199

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-1895**

JAMES R. HOUSEHOLDER, JR., Appellant

VS.

SUPERINTENDENT GREENE SCI, ET AL.

(W.D. Pa. Civ. No. 2:20-cv-01115)

Present: KRAUSE, MATEY and PHIPPS, Circuit Judges

Submitted is Appellant's Application for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The application for a certificate of appealability is denied because Appellant has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003). In particular, jurists of reason would not debate the District Court's conclusion that Appellant cannot prevail on his claim that trial counsel rendered ineffective assistance by failing to adequately cross-examine the victims. See Strickland v. Washington, 466 U.S. 668 (1984); Harrington v. Richter, 562 U.S. 86, 106 (2011); Eze v. Senkowski, 321 F.3d 110, 127 (2d Cir. 2003) (explaining that courts should not "second-guess" an attorney's cross-examination conduct "unless there is no strategic or tactical justification for the course taken" (internal quotation marks omitted)). Jurists of reason also would not debate the determination that Appellant was not entitled to relief under Federal Rule of Civil Procedure 59(e). See Slack, 529 U.S. at 484.

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: August 26, 2022
PDB/cc: James R. Householder, Jr.
All Counsel of Record

A True Copy:

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

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

JAMES R. HOUSEHOLDER , JR.,

Petitioner,

v.

S.P.T. ROBERT GILMORE, JOSH SHAPIRO *Attorney General of the State of Pennsylvania*,

Respondents.

20cv1115
ELECTRONICALLY FILED

ORDER OF COURT

On July 24, 2020, Petitioner James Householder, Jr. filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. (Doc. 1). This matter was referred to United States Magistrate Judge Lisa Pupo Lenihan for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

On March 16, 2022, Magistrate Judge Lenihan filed a thorough Report and Recommendation, recommending that the Petition for Writ of Habeas Corpus be denied, and that a certificate of appealability be denied. (Doc. 21).

Petitioner was notified that pursuant to 28 U.S.C. § 636(b)(1) he had fourteen days to file written objections to the Report and Recommendation. (*Id.*). Petitioner timely filed Objections on March 29, 2022.[1] (Doc. 22).

After *de novo* review of the Record in this matter, Magistrate Judge Lenihan's Report and Recommendation (Doc. 21), and Petitioner's Objections to Magistrate Judge Lenihan's Report

[1] Petitioner also filed a Notice of Appeal of the Magistrate Judge's Report and Recommendation on March 27, 2022 (Doc. 24), which divested this Court of jurisdiction to issue this Order of Court until April 21, 2022, when the United States Court of Appeals for the Third Circuit issued an Order dismissing Petitioner's appeal pursuant to Fed. R. App. 42(b). (Doc. 26).

and Recommendation (Doc. 22), which the Court finds are meritless, the Court ORDERS that the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is DENIED, and no certificate of appealability is issued.

It is further ORDERED that the March 6, 2022 Report and Recommendation (Doc. 21) is adopted as the Opinion of the Court.

The Clerk of Court shall mark this case closed.

SO ORDERED this 22nd day of April, 2022.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: U.S. Magistrate Judge Lisa Pupo Lenihan

James R. Householder, Jr.
LW-2687
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370

All ECF Registered Counsel of Record

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

JAMES R. HOUSEHOLDER, JR., Petitioner, v. S.P.T. ROBERT GILMORE, and JOSH SHAPIRO, *Attorney General of the State of* Pennsylvania, Respondents.	Civil Action No. 2:20-cv-01115 District Judge Arthur J. Schwab Magistrate Judge Lisa Pupo Lenihan

REPORT AND RECOMMENDATION

I. RECOMMENDATION

Petitioner James R. Householder has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. For the following reasons, it is respectfully recommended that Petitioner's petition for writ of habeas corpus be denied. It is further recommended that a certificate of appealability be denied.

II. REPORT

A. Background

In the Court of Common Pleas of Westmoreland County, Pennsylvania, Petitioner was convicted at a jury trial of multiple crimes related to his sexual assault of three young victims, S.A., E.B., and E.S., over the course of twelve years. The court imposed a judgment of sentence with an aggregate term of 24 to 48 years' imprisonment.

On direct appeal, the Pennsylvania Superior Court affirmed his judgment of sentence. Commonwealth v. Householder, 158 A.3d 185 (Pa. Super. 2016) (unpublished memorandum). The Pennsylvania Supreme Court denied his petition for allowance of appeal. Commonwealth v. Johnson, 129 A.3d 1241 (Pa. 2015).

Petitioner subsequently filed a petition pursuant to the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, which was dismissed. The Pennsylvania Superior Court affirmed the dismissal. Commonwealth v. Householder, 200 A.3d 600 (Pa. Super. 2018) (unpublished memorandum); ECF No. 1-1. The Pennsylvania Supreme Court denied allowance of appeal from the order of the Superior Court. Commonwealth v. Householder, 214 A.3d 230 (Pa. 2019). The United States Supreme Court denied a petition for writ of certiorari. Householder v. Pennsylvania, 141 S. Ct. 95 (2020).

Petitioner timely commenced this habeas litigation by filing a petition on July 24, 2020. ECF No. 1. Respondents, through the District Attorney of Westmoreland County, filed a response on November 16, 2020. ECF No. 10. Petitioner then filed a traverse. ECF No. 17. The petition is ripe for consideration.

B. Analysis

Petitioner sets forth four grounds for relief, all of which are based on the assertion of trial counsel's ineffectiveness stemming from the manner in which counsel did or did not cross examine the victims. Petitioner litigated these ineffectiveness claims in his PCRA petition and on appeal from the denial thereof.

Because the state court reviewed these claims and rejected them on their merits, the following standard is applicable. Under the Antiterrorism and Effective Death Penalty Act of 1996

("AEDPA"), Pub.L. No. 104-132, 110 Stat. 1214, April 24, 1996, if a state court rejects a claimed federal violation on the merits, to obtain habeas relief a petitioner must show that the ruling:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that 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). *See also* Williams v. Taylor, 529 U.S. 362, 405-06 (2000); Lambert v. Blackwell, 387 F.3d 210, 234 (3d Cir. 2004); Thomas v. Horn, 570 F.3d 105 (3d Cir. 2009).

An unreasonable application of federal law focuses on whether the state court unreasonably applied relevant Supreme Court holdings. White v. Woodall, 572 U.S. 415, 419-20 (2014). A petitioner must show an error so egregious "that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 102-03 (2011). An unreasonable determination of the facts is one where the petitioner proves by clear and convincing evidence, *see* 28 U.S.C. § 2254(e)(1), that the conclusion drawn from the evidence by the state court is so improbable that it "blinks reality." Miller-El v. Dretke, 545 U.S. 231, 266 (2005). As long as reasonable minds might disagree about the correctness of a factual determination, a federal habeas court must defer to the state court's determination. Rice v. Collins, 546 U.S. 333, 341-42 (2006).

The Superior Court held, in pertinent part, as follows:

> ... Appellant asserts that the PCRA court erred in dismissing ineffective assistance of counsel claims. The following principles govern our review:
>
> We must examine whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal

> error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.
>
> * * *
>
> It is well-established that counsel is presumed to have provided effective representation unless the PCRA petitioner pleads and proves all of the following: (1) the underlying legal claim is of arguable merit; (2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and (3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error.

Commonwealth v. Franklin, 990 A.2d 795, 797 (Pa. Super. 2010) (citations omitted). Counsel cannot be deemed ineffective for failing to pursue a meritless claim. ***Commonwealth v. Loner***, 836 A.2d 125, 132 (Pa. Super. 2003) (*en banc*). We may affirm the PCRA court's ruling on any basis apparent in the record. ***Commonwealth v. Wiley***, 966 A.2d 1153, 1157 (Pa. Super. 2009).

In his first issue, Appellant asserts the ineffective assistance of trial counsel for failing to cross-examine the victims regarding inconsistencies in their testimony.[fn 10] Appellant's Brief at 13. According to Appellant, because the victims were not cross-examined appropriately, he was deprived of his Sixth and Fourt[]eenth Amendment rights under the United States Constitution. ***Id.*** at 14.

By way of background, during his cross-examination of the victims, trial counsel pointed out several of the inconsistencies that Appellant references. Trial counsel cross-examined E.B. about the first time she discussed the incidents of sexual abuse with S.A. and the timeframe in which S.A. and E.B. indicated they started talking to each other about the incidents. ***See*** N.T. Trial, 8/6/14, at 229, 391. Trial counsel cross-examined S.A. about her statements that the assaults stopped when she fractured her ankle and that she was assaulted after the cast was removed. ***See id.*** at 244-46. Trial counsel also cross-examined S.A. as to her testimony that her memory was clear that she had been abused but that she did not completely remember everything. ***See id.*** at 235. Additionally, trial counsel cross-examined E.S. regarding Appellant touching her underneath her clothes despite having said he did not previously. ***See id.*** at 287-88.

Trial counsel, outside the presence of the jury, also stated that he had a strategy not to ask S.A. about being touched at Swissvale and the discrepancy between being touched with Appellant's hands or his penis because it would give her the opportunity to clarify, say more about the incidents, and revisit that attempted rape charge.[fn 11] N.T. Trial, 8/6/14, at 248-49.

Additionally, during his closing argument, trial counsel stated the following:

> Now, there were inconsistencies that were said shortly after my client was charged with these crimes. There were inconsistencies between some of the witnesses saying what they said under oath two years ago and what they are saying this week. Those inconsistencies, if you believe they are minor and totally not important, you may be free to disregard anything that was said about the inconsistencies. But if the inconsistency was significant, then you are going to have to rationalize whether somebody's memory two years ago was better than their memory this week. So, it is up to you as the finders of fact to determine whether any inconsistency is significant or not significant.
>
> Some of the inconsistencies involve whether or not my client touched them in an appropriate way—inappropriate, I'm sorry, and whether or not my client touched them by force, whether or not my client touched them when they were sleeping. Because there were differences. And I am hoping that your recollection will recall that some of these inconsistencies do not establish that my client touched them the way they testified two years earlier.

N.T. Trial, 8/8/14, at 553-54.

"The scope and vigor of cross-examination is a matter which falls within the ambit of sound trial strategy to be exercised by trial counsel alone." ***Commonwealth v. Molina***, 516 A.2d 752, 757 (Pa. Super. 1986). "Claims of inconsistent statements must be proven by evidence of record or else claims of ineffectiveness that are based on a witness's alleged inconsistent statements are not properly before a reviewing court." ***Commonwealth v. Begley***, 780 A.2d 605, 635 (Pa. 2001) (citation omitted). Additionally, "trial counsel may make a tactical decision not to question witnesses about alleged inconsistencies so as not to enable witnesses to clarify their testimony and develop plausible explanations for apparent inconsistencies in their testimony." ***Id.*** (citation omitted). Further, counsel will not be found to have acted unreasonably by "not pressing the witnesses about [minor inconsistencies] on cross-examination." ***Id.*** at 636-37 (citation omitted).

In ***Begley***, a defendant who was convicted of kidnapping and murder raised claims of ineffectiveness of trial counsel for failing to cross-examine witnesses at trial as to inconsistencies in their prior statements. ***Id.*** at 635-38. Begley asserted that witnesses made inconsistent statements as between statements in police reports and at trial. ***Id.*** at 638. However, "the police reports were not admitted into evidence and [Begley] fail[ed] to provide . . . any other factual evidence" to support the claims. ***Id.*** Thus, the claims failed for lack of arguable merit. ***Id.***

In ***Commonwealth v. Baez***, 720 A.2d 711 (Pa. 1998), the defendant was convicted of stabbing the victim to death after raping her. A friend of Baez's witnessed Baez stabbing the victim. ***Baez***, 720 A.2d at 719. At the preliminary hearing, he testified that he saw a knife in Baez's hand, but at trial, the witness denied seeing a knife and testified that he only saw Baez's hand moving in a stabbing motion. ***Id.*** at 734.

In ***Baez***, our Supreme Court noted that "[t]rial counsel will not be deemed ineffective for failing to impeach a witness when such impeachment would only highlight damaging portions of the witness' testimony," and "[t]rial counsel acted reasonably in declining to pursue the inconsistency, since it would have focused the jury on the possibility that [Baez] had a knife in his hand at the time of the murder." ***Id.***

In ***Commonwealth v. Greene***, 702 A.2d 547 (Pa. Super. 1997), the defendant was convicted of robbery and other related offenses. The owner of a jewelry store that Greene attempted to rob testified. ***Greene***, 702 A.2d at 558. As to inconsistencies between the owner's testimony at the preliminary hearing and trial, this Court found that trial counsel was not ineffective for failing to cross-examine the storeowner on these matters. ***Id.*** This was because the storeowner's testimony was corroborated by two other witnesses, and there was no reasonable probability of a different outcome if the witness was impeached with his prior testimony. ***Id.***

Here, certain instances of inconsistency in the victims' testimony were addressed during cross-examination, and, thus, there is no arguable merit as to Appellant's argument regarding those items. ***See Franklin***, 990 A.2d at 797. As to the inconsistencies in which Appellant relies on the police and arrest reports and the report by the Beaver County Children and Youth Agency, these items were not made part of the record and no other evidence was presented to show that these inconsistencies existed. Accordingly, this Court cannot properly consider these alleged inconsistencies. ***See Begley***, 780 A.2d at 638.

Regarding S.A.'s account of being touched and whether she was touched by Appellant's hands or his penis, trial counsel stated on the record that he had a strategy not to question the victim regarding this discrepancy. ***See*** N.T. 8/6/14, at 248-49. This was a reasonable strategy in that it prevented the jury from focusing on this part of the testimony and prevented elaboration regarding "damaging portions" of the victim's statements. ***See Baez***, 720 A.2d at 734.

As to the remainder of the inconsistencies, the victims' testimony corroborated each other, ***see Greene***, 702 A.2d at 558, and the inconsistencies were of a minor nature. ***See Begley***, 780 A.2d at 636-37.

Thus, [. . .] Appellant's claims fail for all of the foregoing reasons. ***See Wiley***, 966 A.2d at 1157.

. . .

[footnote 10] Appellant characterizes the inconsistencies as follows:

1. According to Appellant, S.A. told the police that she did not recall E.B. describing certain incidents to her, citing Police report #12-298. At trial,

however, E.B. testified that "if something happened to [S.A. while she was sleeping], I would tell her." N.T. Trial, 8/6/14, at 392.

2. S.A. testified that the first time she talked to E.B. about the incidents occurring was at the Pittsburgh Mills Mall, but E.B. testified the first time they discussed the incidents was at the Lower Burrell house. N.T. Trial, 8/6/14, at 219, 391.

3. The timeframe when S.A. and E.B. indicated they started talking to each other about the incidents differed. N.T. Trial, 8/6/14, at 229, 391.

4. According to Appellant, S.A. testified that the assaults stopped when she fractured her ankle, citing to Police report #12-298. However, S.A. also testified that nothing was going on medically, Prelim. Hr'g, 12/4/12, at 37, and testified that she was assaulted after her cast was removed. N.T. Trial, 8/6/14, at 244-46.

5. E.B. allegedly indicated that she was not assaulted at a house in Lower Burrell, but S.A. was assaulted there. ***See*** Prelim. Hr'g, at 12/4/12, at 64. At trial, however, E.B. stated that she was also assaulted at the Lower Burrell house. N.T. Trial, 8/6/14, at 367.

6. According to Appellant, citing to Beaver County Children & Youth Services report and Police report #12-298, S.A. indicated that Appellant forced her to touch Appellant's intimate parts, but also allegedly indicated that Appellant would ask her to touch his penis and she refused.

7. At trial, E.B. testified that abuse at Lower Burrell house only occurred in one room, but she had previously stated that the abuse sometimes happened in the basement. N.T. Trial, 8/6/14, at 353; Prelim. Hr'g, 12/4/12, at 61.

8. S.A. testified to being touched only with Appellant's hands at the Swissvale house where she had lived with Appellant, but she had previously stated that he touched her with his penis as well. N.T. Trial, 8/6/14, at 234-35; Prelim. Hr'g, 12/4/12, at 11.

9. S.A. testified that her memory was clear that she had been abused from the age of five at trial, but she also indicated she did not completely remember. N.T. Trial, 8/6/14, at 235; Prelim. Hr'g, 12/4/12, at 42.

10. S.A. stated that she had seen Appellant touch E.B. at the house in Lower Burrell. Prelim. Hr'g, 12/4/12, at 39. At trial, however, she testified that she did not see anything bad happen between E.B. and the Appellant at the Lower Burrell house. N.T. Trial, 8/6/14, at 212.

11. According to Appellant, S.A. stated that Appellant made her take her clothes off. At trial, however, S.A. indicated that she did not take her clothes off herself. N.T. Trial, 8/6/14, at 242.

12. S.A. testified that at a residence in Natrona, Appellant did not engage in horseplay with her, but E.S. testified that Appellant had touched S.A. inappropriately at the Natrona residence during horseplay. N.T. Trial, 8/6/14, at 263, 289.

13. E.S. stated that she awoke to Appellant in the bed with her and the other victims and that he was touching E.B.'s back, Prelim. Hr'g, 12/4/12, at 87, but at trial, she said he was touching her butt and her crotch. N.T. Trial, 8/6/14, at 282.

14. E.S. allegedly described Appellant grabbing her breasts at the Pittsburgh Mills Mall, citing arrest report 20121116M001. At trial, however, E.S. stated that Appellant touched only her butt and waist at the Pittsburgh Mills Mall. N.T. Trial, 8/6/14, at 295.

15. E.S. testified at trial during cross-examination that Appellant touched her underneath her clothes, but she had previously stated that Appellant did not touch her underneath her clothing. N.T. Trial, 8/6/14, at 287-88.

16. E.B. recalled an incident at Kennywood, allegedly indicating that she became upset, Prelim. Hr'g, 12/4/12, at 76, but, at trial, she indicated that she had not become upset. N.T. Trial, 8/6/14, at 382-83.

17. E.B. allegedly told police that she always rode in the front seat, citing Police report #12-298. At trial, however, E.B. testified to being picked up and sitting in the back seat of the car. N.T. Trial, 8/6/14, at 384.

See Appellant's Brief at 4-11.

We note that Appellant references a police report, "#12-298," an "arrest report 20121116M001," and a report by the Beaver County Children and Youth Agency on September 7, 2012, none of which are contained in the certified record. Additionally, our review reveals that Appellant mischaracterizes the record on point 4, ***see*** N.T. Trial, 8/6/14, at 246 (indicating that S.A.'s testimony showed that it was true both that the assaults continued after her cast was removed and that she at times fought back and prevented Appellant from touching her), point 5, ***see*** N.T. Prelim. Hr'g, 12/4/12, at 64 (indicating E.B. testified that she was assaulted at the Lower Burrell house), and point 8, ***see*** N.T. Trial, 8/6/14, at 235 (indicating S.A. testified that she could not remember being touched by Appellant's other body parts at the Swissvale house).

> [footnote 11] The Commonwealth ultimately withdrew the attempted rape charge at the Swissvale location.

ECF No. 1-1 at 9-17 (footnote 12 omitted).

In Ground One, Petitioner asserts that the Superior Court made an objectively unreasonable determination of the facts in its opinion. ECF No. 1 at 6. In support of this claim, he first identifies a statement by the Superior Court on page 7 of its opinion; however, this was merely a summary of its prior holding, and that statement was not relevant to the claim of trial counsel's ineffectiveness. Id. (*citing* ECF No. 1-1 at 7). He next asserts that the Superior Court found that "during cross-examination of the victims, trial counsel pointed out several of the inconsistencies that [Petitioner] references," but, he argues "the accuser[]s w[]ere never directly questioned which is the principal means by which the believability of a witness and the truth of his or her testimony are tested." ECF No. 1 at 6. In his argument, Petitioner does not truly challenge the determination made by the Superior Court. *i.e.*, that trial counsel pointed out several inconsistencies; rather, he sets forth multiple additional alleged inconsistencies about which he argues his trial counsel should have questioned the victims. Id. at 7-12. Accordingly, Petitioner presents no basis for habeas relief pursuant to 28 U.S.C. § 2254(d).

In Ground Two, Petitioner points to the Superior Court's description of trial counsel's stated strategy in not questioning S.A. about certain matters, and states, "How is this logical, I did not take a plea deal, this deprives me of due process of cross-examination." Id. at 15. Petitioner's questioning of the logic of his trial counsel's strategy is misplaced in this proceeding. He presents no claim that the Superior Court's related findings resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States or resulted in a decision that was based on an unreasonable

determination of the facts in light of the evidence presented. In short, Petitioner has not shown that, on this basis, he is entitled to habeas relief pursuant to 28 U.S.C. § 2254.

In Ground Three, Petitioner references the Superior Court's holding wherein it cited Commonwealth v. Begley, 780 A.2d 605, 638 (Pa. 2001), and found that it could not properly consider alleged inconsistencies on which Petitioner relied in the police and arrest reports because these items were not made part of the record and no other evidence was presented to show that these inconsistencies existed. ECF No. 1 at 17; ECF No. 1-1 at 17. Petitioner characterizes the state court's holding as "unreasonably applied," ECF No. 1 at 17, presumably asserting a claim under 28 U.S.C. § 2254(d)(1). However, because Petitioner fails to provide any showing whatsoever that the state court unreasonably applied relevant United States Supreme Court holdings, he cannot obtain habeas relief pursuant to 28 U.S.C. § 2254(d)(1).

In Ground Four, Petitioner asserts that his trial counsel "was ineffective for not finding out the truth." ECF No. 1 at 20. Under this claim, Petitioner does not challenge any part of the Superior Court's determination. He thus presents no basis for habeas relief pursuant to 28 U.S.C. § 2254.

C. Certificate of Appealability

AEDPA codified standards governing the issuance of a certificate of appealability for appellate review of a district court's disposition of a habeas petition. It provides that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ... the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court[.]" 28 U.S.C. § 2253(c)(1)(A). It also provides that "[a] certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). "When the district court denies a habeas

petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, 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). Where the district court has rejected a constitutional claim on its merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* Applying those standards here, jurists of reason would not find it debatable whether Petitioner's claims should be denied for the reasons given herein. Accordingly, no certificate of appealability should issue.

D. Conclusion

For the foregoing reasons, it is respectfully recommended that Petitioner's petition for writ of habeas corpus, ECF No. 1, be denied. It is further recommended that a certificate of appealability be denied.

In accordance with the Federal Magistrate Judge's Act, 28 U.S.C. §636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of this Report and Recommendation to file written objections thereto. Any party opposing such objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: March 16, 2022.

Lisa Pupo Lenihan
United States Magistrate Judge

cc: James R. Householder, Jr.
LW-2687
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370

Counsel for Respondents
(Via CM/ECF electronic mail)