No. USAP-3

IN THE

SUPREME COURT OF THE UNITED STATES

Keith Davis — PETITIONER
(Your Name)

VS.

Superintendent, ET. AL — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

_____

_____

☒ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

Keith Davis
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Keith Davis, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): NONE	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
SCI-HOUPA	209 INSTITU-	WAS KNOWN	$ ↓100.00
SCI-HOUPA	TION DRIVE	WAS KNOWN	$ ↓100.00
SCI-HOUPA	HUNTINGDALE, PA	WAS KNOWN	$ ↓100.00

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE	NONE	NONE	$ 0
NONE	NONE	NONE	$ 0
NONE	NONE	NONE	$ 0

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Citizens	$ ↓100.00	$ 0
	$	$ 0
	$	$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value NONE

☐ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model /
Value NONE

☐ Motor Vehicle #2
Year, make & model
Value NONE

☐ Other assets
Description
Value NONE

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ 0	$ 0
NONE	$ 0	$ 0
NONE	$ 0	$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
NONE	NONE	NONE
NONE	NONE	NONE
NONE	NONE	NONE

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ 0	$ 0
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: _____	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other: _____	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): _____	$ 0	$ 0
Total monthly expenses:	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am incarcerated and my labors are provided by and through the inmate that I am which is permitted as the exception to slavery under the United States Constitution

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 11/7/24, 2024

Keith Davis

(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Keith Davis — PETITIONER
(Your Name)

vs.

Superintendent, E.T. AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keith Davis
(Your Name)

209 Institution Drive
(Address)

Houtzdale, PA 16698
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

Did the Third Circuit Court of Appeals err in not issuing a "C.O.A." when the record alone demonstrated that reasonable jurists were not in agreement as to the moment of the procedural default and Habeas Petitioner established "cause" under Martinez v. Ryan since PCRA Counsel caused petitioner's substantial claim of ineffective assistance of trial counsel to be waived during initial Review collateral proceedings.

SUGGESTED ANSWER: YES

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: District Attorney of Philadelphia, Pennsylvania; Attorney General of Pennsylvania.

RELATED CASES

- Davis v. Superintendent, ET. AL, No.: 20-02845, U.S. District Court for the Eastern District of Pennsylvania. Judgment entered Mar. 14, 2022

- Davis v. Superintendent, ET. AT., No: 22-1581, U.S. Court of Appeals for the Third Circuit. Judgment Entered Oct. 04, 2022 (Denying Petition for Rehearing)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[X] reported at 2022 WL 768155 (E.D. PA MAR. 14, 2022); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 7-28-22.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10-4-22, and a copy of the order denying rehearing appears at Appendix F.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment to the U.S. Const. (Right to Counsel)

6th Amendment to the U.S. Const. (Speedy Trial)

14th Amendment to the U.S. Const. (Due Process)

14th Amendment to the U.S. Const. (Rights extended to state citizens)

STATEMENT OF THE CASE

Petitioner's counsel at initial Post Conviction Relief Act Proceedings failed to adequately raise the Commonwealth's violation of 42 Pa.C.S. 1901 as the underlying issue to ineffective assistance of Trial Counsel. Subsequently, the State Appeal court found waiver at Rule 1925 of the Pennsylvania Rules of Appellant Procedure. However, the reason it was not raised in a 1925(b) is because it was already not preserved (i.e. waived) at Petitioner's initial Post Conviction Relief Act Proceeding.

Alternatively, the State and Federal lower courts both are intentionally misinterpretting Alabama v Bozeman in order to deny Petitioner relief. Specifically, they claim that it is not the fact that Bozeman was returned to his original place of imprisonment after one day but rather that he was returned for over a month. However, Bozeman concerned the one (1) day removal and not the duration of the return.

REASONS FOR GRANTING THE PETITION

In order to uphold the integrity of this Honorable Court. Public Trust. And to ensure that all citizens are treated equally under the law without fear of the lower courts being permitted to intentionally deny relief due to having the false knowledge that there is only a 1% chance their unjust decisions will be checked.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith DAVIS Keith Davis

Date: 1/7/24

IN THE SUPREME COURT OF THE UNITED STATES

KEITH DAVIS, PRO-SE PETITIONER

V/S

SUPERINTENDENT SCI-HOUTZDALE ET.AL., RESPONDENTS

PETITION FOR CERTIORARI

This Petition for Certiorari is the result of the United States Court of Appeals for the Thied Circuit upholding the denial of Pro-Se Petitioner's Writ of Habeas Corpus and denying Petitioner's Sur Petition for Rehearing received by Petitioner on or about June 18TH, 2023

For the Respondents:

District Attorney's Office

Appeals Unit

1301 Filbert St

Philadelphia, PA

19107

For the Petitioner:

Keith Davis #JZ-3258

P.O. Box 1000

209 Institution Drive

Houtzdale, PA

16698

QUESTION PRESENTED

I. DID THE THIRD CIRCUIT COURT OF APPEALS ERR IN NOT ISSUING A 'C.O.A.' WHEN THE RECORD ALONE DEMONSTRATES THAT REASONABLE JURISTS WERE NOT IN AGREEMENT AS TO THE MOMENT OF THE PROCEDURAL DEFAULT AND HABEAS PETITIONER ESTABLISHED "CAUSE" UNDER MARTINEZ V. RYANSINCE PCRA COUNSEL CAUSED PETITIONER'S SUBSTANTIAL CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL TO BE WAIVED DURING INITIAL REVIEW COLLATERAL PROCEEDINGS?

SUGGESTED ANSWER: YES

CITATIONS TO CASES

Reference to Opinion(s) below (Rule 14.1(d) (Appendix "A" - "F"):

"A": Opinion of First Judicial District of Pennsylvania; (CP-51-CR-0007071-2009); Filed 6-13-18;

"B": Opinion of The Superior Court of Pennsylvania; (NO.: 3725 EDA 2017); Filed 9-26-19;

"C": ORDER of The United States District Court for the Eastern District of Pennsylvania; No.:20-2845; Filed 3-14-22;

"D": ORDER of United States Court of Appeals for the Third Circuit; NO.: 22-1581; Filed 7-28-22;

"E": Service of ORDER of 10-04-22; Dated 06-15-23;

"F": ORDER of U.S. Court of Appeals for the Third Circuit denying "Sur Petition for Rehearing"; Dated 10-04-22.

EXHIBITS "A" - "B": EXHIBIT."A" is Inmate Skills Development Plan "Movement Data" and "B" is Inmate Skills Development Plan "Education and Employment Data".

STATEMENT OF JURISDICTION

Under 28 USCS § 1254(1), United States Supreme Court has **jurisdiction**, on **certiorari**, to review denial, by circuit judge or panel of **Federal** Court of Appeals, of certificate of appealability, as 28 USCS § 2253(c) provides that unless "circuit justice or judge" issues certificate of appealability, appeal may not be taken to Court of Appeals from final order in (a) habeas corpus proceeding involving state prisoner, or (b) proceeding under 28 USCS § 2255; (2) application for § 2253(c) certificate—such as the application at issue, which resulted in denial, by panel of Court of Appeals, of certificate of appealability concerning Federal District Court's denial of accused's § 2255 motion to vacate conviction on **federal** firearms charge—meets § 1254(1) description which confines Supreme Court's **certiorari jurisdiction** under § 1254(1) to "[c]ases in" Courts of Appeals; and (3) Supreme Court will overrule portion of House v Mayo (1945) 324 US 42, 89 L Ed 739, 65 S Ct 517, holding that because cases in which certificates of probable cause were refused were not "in" Court of Appeals, Supreme Court lacked statutory certiorari jurisdiction to review refusals to issue certificates of probable cause; accused's application in instant case met § 1254(1) description. Hohn v. United States, 524 U.S. 236, 118 S. Ct. 1969, 141 L. Ed. 2d 242, 11 Fla. L. Weekly Fed. S 627, 98 Cal. Daily Op. Service 4556, 1998 Colo. J. C.A.R. 3110, 98 D.A.R. 6215 (1998), remanded, 193 F.3d 921 (8th Cir. 1999).

DATE OF JUDGMENT OR ORDER SOUGHT TO BE REVIEWED: 10-04-22*

* YOUR PETITIONER WAS NOT SERVED THIS ORDER NOR DID HE RECEIVE IT UNTIL AFTER JUNE 19, 2023. (PLEASE SEE: APPENDIX "E"). IF ADDITIONAL PROOF IS NEEDED IT WILL BE PROVIDED.

ARGUMENT

I. DID THE THIRD CIRCUIT COURT OF APPEALS ERR IN NOT ISSUING A 'C.O.A.' WHEN THE RECORD ALONE DEMONSTRATES REASONABLE JURISTS WERE NOT IN AGREEMENT AS TO THE MOMENT OF THEPROCEDURAL DEFAULT AND HABEAS PETITIONER ESTABLISHED "CAUSE" UNDER MARTINEZ SINCE PCRA COUNSEL CAUSED PETITIONER'S SUBSTANTIAL CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL TO BE WAIVED DURING INITIAL REVIEW COLLATERAL PROCEEDINGS?

PETITIONER'S APPLICATION FOR A CERTIFICATE OF APPEALABILITY ("C.O.A.") SHOULD HAVE BEEN GRANTED AND THE "C.O.A." ISSUED AS PETITIONER'S PLEADINGS, IF ACKNOWLEDGED, CLEARLY DEMONSTRATE THAT REASONABLE JURISTS COULD DEBATE WHETHER THE EXHAUSTION REQUIREMENT WAS MET AND THEREFORE THE ISSUE SHOULD HAVE ARGUABLY BEEN RESOLVEDIN A DIFFERENT MANNER AS TO THE FINAL ORDER OF THE DISTRICT COURT (DCO).

STANDARDS GOVERNING ISSUANCE OF A "C.O.A.": THESTANDARD FOR ISSUANCE OF A "C.O.A." IS NOT STRINGENT. UNDER 28 U.S.C. 2253 AND F.R.APP.P. RULE 22(B) A HABEAS PETITIONER WHO WISHES TO APPEAL FROM A FINALORDER OF A DISTRICT COURT MUST OBTAIN A C.O.A. FOR EACH CLAIM THAT HE WISHES TO PRESENT ON APPEAL. TO OBTAIN A C.O.A., THE APPLICANT MUST MAKE A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT." 28 U.S.C. 2253(C)(2). SLACK V. MCDANIEL, 529 U.S. 473, 483 (2000) CONCLUDED THAT, "EXCEPT FOR SUBSTITUTING THE WORD 'CONSTITUTIONAL' FOR THE WORD 'FEDERAL' THE AEDPA'S C.O.A. REQUIREMENT IS MERELY A CODIFICATION OF THE PRE-AEDPA STANDARD FOR GRANTING A CERTIFICATE OF PROBABLE CAUSE, AS ANNOUNCED IN BAREFOOT V. ESTELLE, 463 U.S. 880, 894 (1983). THUS, THE PURPOSE OF THE C.O.A. REQUIREMENT IS "TO PREVENT FRIVOLOUS APPEALS." BAREFOOT, 463 U.S. AT 893.

IN MILLER V. COCKRELL, 537 U.S. 322 (2003) THE COURT SUMMARIZED THE STANDARD: 'A PETITIONER MUST SHOW THAT REASONABLE JURISTS COULD DEBATE (OR FOR THAT MATTER, AGREE THAT) THE PETITION SHOULD HAVE BEEN RESOLVED IN A DIFFERENT MANNER OR THAT THE ISSUE PRESENTED WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER." ID. 336. THE COURT FURTHER EXPLAINED:

> [A] COA DOES NOT REQUIRE A SHOWING THAT THE APPEAL WILL SUCCEED. ACCORDINGLY, A COURT OF APPEALS SHOULD NOT DECLINE THE APPLICATION FOR A COA MERELY BECAUSE IT BELIEVES THE APPLICANT WILL NOT DEMONSTRATE AN ENTITLEMENT TO RELIEF. THE HOLDING IN SLACK WOULD MEAN VERY LITTLE IF APPELLATE REVIEW WERE DENIED BECAUSE THE PRISONER DID NOT CONVINCE A JUDGE, OR, FOR THAT MATTER, 3 JUDGES, THAT HE OR SHE WOULD PREVAIL. IT IS CONSISTENT WITH 2253 THAT A COA WILL ISSUE IN SOME INSTANCES WHERE THERE IS NO CERTAINTY OF ULTIMATE RELIEF. AFTER ALL, WHEN A COA IS SOUGHT THE WHOLE PREMISE IS THAT THE PRISONER "HAS ALREADY FAILED IN THAT ENDEAVOR." BAREFOOT, AT 893 N.4.

MILLER-EL, 537 U.S. AT 337.

HERE, TO CONCLUDE THAT PETITIONER'S APPEAL IS "FRIVOLOUS" WOULD BE AN EXTREME EXAGGERATION AFTER CONSIDERATION OF THE FOLLOWING IS TAKEN INTO ACCOUNT.

A. THE ANTI-SHUTTLING CLAIM WAS NOT PROCEDURALLY DEFAULTED BY 1925(B): FOR THE SAKE OF THIS ARGUMENT, AT LEAST TWO (2) REASONABLE FEDERAL JURISTS ARE OF DIFFERING OPINIONS AS TO THE MANNER OF THE RESOLUTION OF PETITIONER'S WRIT OF HABEAS CORPUS.

(I) MAGISTRATE: JUDGE MARILYN HEFFLEY FOUND / DETERMINED "DAVIS' CLAIM IS PROCEDURALLY DEFAULTED BECAUSE HE FAILED TO RAISE THIS CLAIM BEFORE THE PCRA COURT". (SEE: REPORT & RECOMMENDATION (R&R) 6/29/21 AT 11 (ECF#5)) (CITING PCRA SUPER. OP. (SCO) AT 4).

(ii) District Court: Judge Quinones, Aldjandro Nitza I. found/determined that "Petitioner had waived this claim by not having it in his PCRA Petition" (**SEE**: District Court Order (DCO) adopting the R&R (ECF#33); also available on Westlaw **Davis V. Superintendent**, 2022 WL 768155 LE.D PA. Mar. 14,2022).

(iii) Pennsylvania Superior Court: Judge Stabile found/determined "On May 14, 2018, Davis filed a counseled Rule 1925(b), arguing that; (**1**) The PCRA Court's denial of his amended PCRA Petition was in error because the Commonwealth violated Article III and/or Article IV of the IADA; and (**2**) his trial counsel was ineffective in failing to file a motion to dismiss the charges against Davis in light of the Commonwealth's alleged violation of the IADA. (**SEE** R&R at 4 (citing PCRA Super. CT. Op. at 3) (quoting Rule 1925(b) statement at 1-2); **Commonwealth V. Davis**, No. CP-51-CR-0007071-2009 (Pa.Ct. Com.Pl.Phila.Cnty. May 14,2018)).

(IV) Pennsylvania Superior Court: Judge Olson & Judge Strassburger were in agreement with Judge Stabile's findings/determinations above.

Accordingly, these five "reasonable Jurists" are in disagreement as to the/an alleged procedural default. Yet, there is one more Jurist whose opinion should be considered here... Judge Sandy L.V. Byrd. This Jurist would offer the following; (**A**) "Michael Pileggi, Esq. was retained as PCRA counsel on May 27, 2015, and filed a fourth amended PCRA Petition alleging trial counsel was ineffective for his failure to request that the charges be dismissed with prejudice persuant to Article IV(e) of the Interstate Agreement on Detainers Act (IADA)" (**SEE**; PCRA Ct.Supp.Op.6/13/2019 at 2); (**B**) "On January 18,2017, (Michael Pileggi ,Esq.) filed a supplemental PCRA Petition alleging a violation of Article IV(e) and/or III; thereafter, this court conducted an evidentiary hearing". **Id** at 2.

The significance of the above is the fact that Petitioner Davis, by and through PCRA counsel, was raising the claim of error (violation of Article IV(e)) grounded on ineffective assistance of counsel as Article IV(e) specifically provides;

"If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment persuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice"

(42 Pa.C.S.A. § 9101 (Article IV(e))

This was ... the sole standing claim of error for approximately four years until Attorney Pileggi's supplement adding "and/or Article III" on 1-18-17. (**SEE**: Attorney J. Matthew Wolfe's April 9, 2013 second amended PCRA).

What the Honorable judge would or could not offer is an explanation on how Petitioner's claims of error under Article III & IV(e) (both of which contain the anti-shuttling provision, IV(e) specifically and III generally (III(d) specifically)) turned into a "speedy trial" issue after four days of testimony from witnesses concerning whether or not Petitioner was "returned" to his original place of imprisonment. (**SEE**: N.T. April 10, 2017, May 19, 2017, May 23, 2017, and June 6, 2017). However, the explanation is clear and apparent from the record when the Honorable Judge Byrd asked Attorney Pillegi to "clarify" the issue Attorney Pellegi stated he had two seperate claims; one ineffective assistance of counsel and one "freestanding claim of error under the IAD" (Commonwealth's response 12/08/2020) (citing PCRA hearing 5/19/2017 at 5 and 6). Obviously, neither claim "clarified" anything. What it did accomplish was having the effect of not only waiving Petitioner's antishuttling claim but also allowed the remaining open ineffective claim to be attached to any hand picked underlying issue. It just so happens to be that the judge picked the speedy trial provisions of the IAD as the underlying issue.

The Commonwealth argued at initial review collateral proceedings, "First and foremost to the extent that the Defendant is now on PCRA claiming simply that the IADA(Interstate Agreement on Detainer's Act) was violated. I would submit to the court that the claim was waived as it was never raised at the appropriate time for raising such a claim...so to the extent that the defense is now trying to raise that claim for the first time as a claim simply that the act was violated **that claim is waived** and cannot be raised on appeal. **It should have been raised by trial counsel**". (**SEE:** N.T. 5/19/2017 at 8 and 9).

Moreover, the Commonwealth did not stop there because they wanted to be clear, they literally stated, "I want to make clear that it is our position that the way the claim has been presented to the court here this morning, it is our position that it is a waived claim and that the Defendant cannot be entitled to relief **in the manner in which it was raised this morning.** But if Your Honor is inclined to make a record and have the hearing, certainly that is for Your Honor to decide. Again, I did not respond to these Petitions in writing and I did not raise a waiver prior to this morning because it only became apparent to me right now as we stand here this morning and in our discussions with Your Honor that the claim was being raised in this fashion." (**SEE: N.T.** 5/19/2017 at 11 and 12).

Indeed, the Commonwealth never abandoned their assertion concerning the claim. The Commonwealth violated the IADA for returning this Petitioner to his original place of imprisonment prior to trial being had, or in other words, "he (this Petitioner) was taken (returned) to FCI Cumberland (his original place of imprisonment) after being charged (arraigned) in Philadelphia and before trial". (**SEE**: Commonwealth Memorandum of 10/17/2017 at 7). However, they go into more detail than they did at the evidentiary hearing by citing the provision of the Post Conviction Relief Act statute which caused the waiver. Specifically, "the Commonwealth argued at the evidentiary hearing, and continues to maintain now, that, the Defendant's assertion that he is entitled to relief in the form of dismissal of the charges against him on the basis of a claim that the Commonwealth violated the IADA is waived... **SEE 42 PA. § 9544(b)** (an issue is waived if the Petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal, or in a prior state post conviction proceeding". (**SEE**: Commonwealth Memorandum 10/17/2017 at 7 and 4).

Nevertheless, the Commonwealth abandoned this initial waiver argument once the Pennsylvania Superior Court determined that the waiver occurred during the 1925(b) stage. Their reasoning for adopting the new waiver finding is due to the fact that it is assumed that Petitioner has no protections for counsel's errors on appeal from PCRA dismissals. However, Petitioner does have protections during initial review collateral proceedings under **Martinez V. Ryan**, 566 U.S. 1 (2012).

MERITS OF THE CLAIM

There are two cases that control the outcome of whether Petitioner has met the merits of his antishuttling claim:

(1) Alabama V. Bozeman, 533 U.S. 146 (2001) and **(2) United States V. Pursley**, 474 F.3d 757, 764 (10th Cir 2007). Although the IADA does not define the term "returned" ,42 Pa.C.S.A. §9101, the Tenth Circuit has held that "the prisoner must be sent back to recommence serving his original sentence to trigger the anti-shuttling provision." ***Pursley***, 474 F.3d at 764. The Pennsylvania Superior Court, the Magistrate judge and the District Court judge keep repeating the same song and dance that the Commonwealth puts forth, which is basically, "Petitioner was only returned for thirty six minutes to recommence serving his sentence." What each of them either intentionally or inadvertently ignore is the law and facts. The court held in ***Bozeman*** that the literal language of the IADA requires that violations of the anti-shuttling provisions must result in dismissal of the charge with prejudice. ***Bozeman***, ***id.***, at 150: the "anti-shuttling provision says that trial must be had...prior to the prisoner's being returned to the original place of imprisonment, otherwise, the charges shall be dismissed."

Furthermore, the ***Bozeman*** court was not concerned with how long Mr. Bozeman was returned to his original place of confinement, but rather, "because the Defendant was returned to his original place of imprisonment 'before' 'trial' 'was' 'had'. We conclude that Article IV(e) does bar further proceedings, despite the fact that the interruption of the initial imprisonment lasted for only one day."). **Id.** It is undisputed that your Petitioner's interruption lasted for four days. So the only question is whether or not your Petitioner was "returned".

Your Petitioner understands and appreciates that this Honorable Court will not reach the merits of his claim, but, offers the following in support of the alternative provided by 28 U.S.C. §2253 (c)(2) as interpreted in **Miller-El V. Cockrell**, 537 U.S. 322 (2003)... "or that the issue(s) presented were adequate to deserve encouragement to proceed further." **Id** 336. The issue(s) here concern: **(1)** The state and federal courts misinterpreting ***Bozeman's*** (supra) holding (receiving state returning prisoner after one day) to read "the error was that he (Bozeman) was returned for one month." And **(2)** There being no "bright-line" test for what constitutes a prisoner being "returned".

Presently, your Petitioner meets all definitions of the Sister Circuit Courts of the Third Circuit. What complicates the matter further, especially under the facts and circumstances of this particular case, is the fact that after Ellen Roberts, who is the "legal instruments examiner" employed by the Federal Bureau of Prisons (BOP) and the senior person working in her office at FCI Cumberland who is responsible for preparing documents related to prisoners leaving and returning to the FCI persuant to the IADA, testified to Petitioner being "returned, the PCRA court determined that they were only accepting her testimony for clerical purposes after she testified to the following in chronological order: (**SEE: N.T.** 5/19/2017)

She had an independent recollection of Petitioner's situation because it was "somewhat unusual." ***Id.***, 26. Petitioner's situation was "unusual" because when a prisoner leaves the facility persuant to the IADA, "normally they are not returned within a few days of leaving" and generally there is a disposition noted of the charges that led to the IADA transfer. ***Id.***, 29-30. At some point, the FCI received a call that Mr. Davis was being "returned in error" to the FCI and he needed to be returned to Philadelphia (i.e. the demanding jurisdiction). ***Id.***, 30-31.

When the transport officers from Philadelphia arrived, they were told to contact their office "because they needed to bring the inmate back to Philadelphia." Once they obtained the relevant information, they returned Mr. Davis to Philadelphia. ***Id.***, 32.

She described Exhibit C-1, which is titled *Inmate History*, ADM-REL. As described, the ADM-REL is an abbreviation for admit and release. **SEE**: N.T 5/10/2017, 34-45. The document lists anytime that a prisoner is admitted into or released from a BOP facility. She explained that Mr. Davis was first admitted to FCI Cumberland on October 6, 2008. He remained at the prison until he was "keyed out" on April 2, 2009 at 12:33 when he left on the IADA transfer. ***Id.***, 36. He remained in the custody of the Pennsylvania authorities until he was "returned" to FCI Cumberland and :keyed" back into FCI Cumberland on April 6, 2009 at 13:06 (i.e. 1:06 p.m.) ***Id.***, 36-37.

Thus, according to Ms. Roberts and CW-1, Mr. Davis left FCI Cumberland April 2, and was returned on April 6, 2009 at 12:33 p.m.: "For the [BOP] purposes, he was deemed in transit from 4/2/09, 12:32 to 4/6/09 at 12:12:33. **SEE**: N.T. 5/19 2017, 28. The entry on CW-1 that says 4/6/2009, 12:33, indicates that "he was returned to the facility," and the entry saying 4/6/2009, 13:06, meant: "he was keyed into SCI Cumberland since we are his designated facility at 4/6/2009 at 12:33. And then it shows he was keyed back out on 4/6/2009 at 13:06." **SEE**: N.T. 5/19/2017, 38-39. He remained in Cumberland from 12:33 until 13:06 on April 6, 2009, a total of 33 minutes. When he was keyed out at 13:06 on April 6, 2009 he did not return to Cumberland until 2010. ***Id.***, 40.

Notably, she also interpreted a memo sent to Ms. Roberts (contained in Commonwealth exhibit 7) that said: "Outstanding warrant under the agreement IADA Philadelphia police attempted to return the defendant to your institution. As discussed, please return Mr. Davis to custody, as his charges remain outstanding in Philadelphia." She explained this document by stating: "**He should never have gone back to Federal custody** and we were informed at that time that--that's why the memo was sent, sent to Federal custody."

SEE: NT 5/23/2017,82-83

Ms. Roberts explained the meaning of "keyed" in or out:

> When an inmate arrives at the facility we have to key them into the system so they are on our count and **we are responsible for them once they are keyed into our system**. And then when they are released, when there is a temporary release or a permanent release, we have to key them out of the system so they are no longer in the facility and no longer being accounted for.

SEE: NT 5/19/2017,39

Attorney Pileggi catches the significance of Ms. Roberts testimony as does the A.D.A. and Judge Byrd. Upon realizing that she had just said the magical words, "we are responsible for them once they are keyed into our system...when they are released...we have to key them out of the system so they are no longer in the facility and no longer being accounted for", the Judge then discredits her testimony and claims she is only a "clerical witness" and "not an expert on the IADA."

SEE: NT 5/19/2017 at 57-59.

Commonwealth exhibit 2 is titled "Inmate History Quarters." **SEE**: NT 5/19/2017, 42-43. This form tracks "whatever cell or bed that an inmate lives in while they are housed in the facility." ***Id***. At the time he was "keyed into" Cumberland on April 6, 2009, he was kept in "Receiving and Discharge", (abbreviated on the exhibit as "R&D Department") until he was discharged again at 13:06. ***Id.***, 43-44. Because FCI Cumberland was notified that Mr. Davis "was not staying" he did not undergo the normal process that occurs when a prisoner is staying. ***Id.***, 46-47. The Commonwealth also called Carolann Masturzo, who at the time was employed in the Extradition Unit of the District Attorney's Office.

SEE: NT 5/23/2017, 65.

With no bright line test for or definition of the term "returned" for purposes of the IADA state officials will be permitted to remove a prisoner from the custody of his original place of imprisonment in one state, shuttle that prisoner across multiple county and state line jurisdictions, commence with criminal proceedings, then upon relizing the prisoner's presence is no longer needed they can shuttle the prisoner back across those hundreds of miles of county and state lines, back to his original place of imprisonment, back into the custody of the sending state, just for that factual scenario to be deemed and qualified as "prepared to return".

The Commonwealth even boldly goes as far as even arguing to the courts that in order to be considered "returned" under **PURSLEY** (supra) that the prisoner must have been returned to "recommence his original sentence" yet they offer no other explanation for your petitioner being shuttled and subsequently returned.

Most importantly, the FederalCorrections Institution of Cumberland Maryland counted 04/06/2012 towards petitioner's original sentence. Additionally, common sense should be factored in considering that the Commonwealth repeatedly points out that "while in transit FCI-CUM was contacted via phone and informed that your petitioner was being "returned in error" to Federal custody and he needed to be returned to state custody. (N.T. 05/19/2017 at 30-31) and via a faxed memo stating "Please return Mr. Davis to (state) custody". So, the obvious question is "Why didn't they simply call the transport officers and tell them to turn the car around"? The proposed answer is because the transaction of returning your petitioner to Federal custody had to be completed.

In other words, once the Writ was issued the transport officers were required to follow through with delivering Mr. Davis to Federal custody. Furthermore, common sense dictates that it does not take a 33 to 36 minute dicussion for the transport officers to be told "Bring him back". What does take a half hour is the wait period for another writ to issue giving the transport officers custody again (that they lost when they returned him "in error").

SUMMATION

(A) Your petitioner's ineffective assistance of trial counsel claim concerning the Commonwealth of Pennsylvania's violation of the IADA was waived by PCRA counsel during initial review collateral proceedings; (B) your petitioner was in fact and law returned to his original place of imprisonment before trial was had; (C) your petitioner pled and proved "cause" for the actual procedural default pursuant to **MARTINEZ** (supra) which cut out a narrow exception to **COLEMAN** (supra); (D) all lower state and federal courts have misinterpretted this court's holding in **BOZEMAN** which concerned the one (1) day Mr. Bozeman remained in the custody of the receiving state and NOT the one (1) month he remain in the sending state after being returned; and (E) due to there being no Bright-Line test for or definition of the term "returned" allows for uncertainties, differing of opinion and a lack of guidance for the Circuit Courts of Appeals.

CONCLUSION

Wherefore, your Petitioner prays this Honorable Court will grant this Petition for Certiorari, consider Petitioner's pleading and examine the record so as to discover Petitioner's asertions to be true and either reach the merits or remand for further proceedings.

/s/ Keith Davis

AFFIDAVIT

I, KEITH DAVIS, DO HEREBY CERTIFY THAT THE STATEMENTS MADE WITHIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE INFORMATION AND BELIEF. FURTHER I UNDERSTAND THE PENALTIES RELATED TO UNSWORN FALSIFICATION TO AUTHORITIES.

DATE: 01/07/23 /S/ Keith Davis

VERIFICATION

I, KEITH DAVIS, DO HEREBY VERIFY THAT I AM SERVING THE PERSON(S) BELOW IN THE MANNER INDICATED:

(A) CLERK OF THE UNITED STATES SUPREME COURT

(B) DISTRICT ATTORNEY OFFICE OF PHILADELPHIA, PENNSYLVANIA

DATE: 01/07/23 /S/ Keith Davis

KEITH DAVIS #JZ-3258

P.O. BOX 1000

209 INSTITUTION DR.

HOUTZDALE, PA 16698

APPENDIX

APPENDIX

"A"

CLD-200 July 21, 2022

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 22-1581

KEITH DAVIS,
Appellant

v.

SUPERINTENDENT SCI HOUTZDALE; et al.

(E.D. Pa. Civ. No. 2:20-cv-02845)

Present: AMBRO, SHWARTZ, and BIBAS, Circuit Judges

Submitted is Appellant's application for a certificate of appealability in the above-captioned case.

Respectfully,

Clerk

ORDER

The application for a certificate of appealability is denied because jurists of reason would not debate whether the District Court properly denied Davis's petition pursuant to 28 U.S.C. §2254. See 28 U.S.C. §2253(c); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Jurists of reason would agree without debate that Davis's ineffective-assistance-of-trial-counsel claim is procedurally defaulted. See Coleman v. Thompson, 502 U.S. 722, 750 (1991).

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: July 28, 2022
DWB/arr/cc: MW; RE; MS

A True Copy:

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

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

KEITH DAVIS	:	**CIVIL ACTION**
Petitioner	:	
	:	**NO. 20-2845**
v.	:	
	:	
SUPERINTENDENT-SCI HOUTZDALE, *et al.*,	:	
Respondents	:	

ORDER

AND NOW, this 14th day of March 2022, upon consideration of the *pro se* petition for a writ of *habeas corpus* filed pursuant to 28 U.S.C. § 2254 (the "Petition") by Keith Davis ("Petitioner"), [ECF 1], the *Report and Recommendation* issued by the Honorable Marilyn Heffley, United States Magistrate Judge (the "Magistrate Judge"), which recommended that the Petition be denied, [ECF 23], and Petitioner's counseled objections to the *Report and Recommendation*, [ECF 31], and after conducting a *de novo* review of the objections, it is hereby **ORDERED** that:

1. The *Report and Recommendation* (the "R&R"), [ECF 23], is **APPROVED** and **ADOPTED**;

2. The objections to the R&R, [ECF 31], are without merit and are **OVERRULED**;[1]

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[1] In the Petition, Petitioner asserts claims premised on contentions that counsel provided ineffective assistance, and that the trial court violated his constitutional rights and Article III of the Interstate Agreement on Detainers Act (the "IADA"), 18 U.S.C. app. § 2, by imposing a sentence that was illegal because the Commonwealth returned Petitioner to his original place of imprisonment in a federal detention facility before trying him on his state charges. The Magistrate Judge issued a well-reasoned R&R and recommended that all of Petitioner's claims be dismissed. Petitioner, now with counsel, filed timely objections limited to the Magistrate Judge's recommendations as to Petitioner's first claim—that trial counsel ineffectively failed to move to dismiss the charges against Petitioner based on a violation of the antishuttling provision of Article III of the IADA. On this issue, the Magistrate Judge concluded that this claim was procedurally defaulted because the Superior Court of Pennsylvania, on review of the denial of Petitioner's petition for post-conviction relief under the Post Conviction Relief Act (the "PCRA"), found that Petitioner had waived this claim by not having presented it in his PCRA petition.

When timely objections to an R&R are filed, a court must conduct a *de novo* review of the contested portions of the R&R. *See Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(C)); *Goney v. Clark*, 749 F.2d 5, 6–7 (3d Cir. 1984). In conducting its *de novo* review, the court may accept, reject, or modify, in whole or in part, the factual findings or legal conclusions of the magistrate judge. 28 U.S.C. § 636(b)(1). Although the review is *de novo*, the statute permits the court to rely on the recommendations of the magistrate judge to the extent it deems proper. *United States v. Raddatz*, 447 U.S. 667, 675–76 (1980); *Goney*, 749 F.2d at 7.

As noted, Petitioner objects to the Magistrate Judge's finding that his first claim was procedurally defaulted. Petitioner's objections are misguided. As explained in the R&R, the Superior Court expressly found this claim waived because, though similar to the claim raised in Petitioner's PCRA, it differed substantively. Specifically, the Superior Court found that the issue raised in the PCRA was focused on the failure of the Commonwealth to try him within the requisite 180 days. *Commonwealth v. Davis*, 2019 WL 4724690, at *4 (Pa. Super. Ct. Sept. 26, 2019) ("Because Appellant did not preserve any issue relating to his 'return to FCI-Cumberland,' the issue is waived."). As the Magistrate Judge correctly found, because the Superior Court's decision was based on independent and adequate state grounds, *i.e.*, waiver, this claim is procedurally defaulted and not subject to *habeas* review. *See Tyson v. Superintendent Houtzdale SCI*, 976 F.3d 382, 389 n.4 (3d Cir. 2020); *Leake v. Dillman*, 594 F. App'x 756, 759 (3d Cir. 2014) (holding that the Superior Court's refusal to review a claim on waiver grounds was an independent and adequate state ground). As such, Petitioner's objection to the Magistrate Judge's procedural default finding is overruled.

Notwithstanding the Superior Court's waiver conclusion and the Magistrate Judge's finding that Petitioner's claim was procedurally defaulted, both the Superior Court and the Magistrate Judge addressed the merits of the claim, in the alternative, and both found that this claim lacked merit. Petitioner objects to these findings and argues that his trial counsel was ineffective for failing to seek dismissal of all the charges against him on account of the Commonwealth returning Petitioner to his original place of federal imprisonment, before his trial on the state charges, in violation of Article III(d) of the IADA. As relevant here, the IADA requires dismissal of state law charges against a person in that state's custody if, before trying the person on the state charges, the state returns the person to the custody of another sovereign that previously held that person in custody. 18 U.S.C. app. 2, § 2, art. III(d).

The Superior Court rejected Petitioner's claim by concluding that the thirty-six-minute time period during which Petitioner was held in the receiving and discharge wing at the federal facility while continuously under the supervision of Pennsylvania authorities did not constitute a "return" of Petitioner to federal custody. *Davis*, 2019 WL 4724690, at *4 n.4. Applying the applicable "highly deferential" standard of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d), the Magistrate Judge found that the state court decision was neither contrary to nor an unreasonable application of federal law. In support of this conclusion, the Magistrate Judge pointed to a number of federal cases in which various United States Courts of Appeals have found that the IADA was not violated where the prisoner remained the custodial responsibility of the second sovereign despite a temporary physical return to the original custodian. *See* R&R, ECF 23, at pp. 14–15 (collecting cases). In light of this case law, the Magistrate Judge concluded, and this Court agrees, that the Superior Court's identical decision was not contrary to or an unreasonable application of federal law. Accordingly, Petitioner's objection is overruled.

Further, Petitioner's reliance on *Alabama v. Bozeman*, 533 U.S. 146 (2001), which the Superior Court addressed, is also misplaced. In *Bozeman*, unlike here, the defendant was returned by state authorities to his original federal place of confinement for approximately one month before being transferred a second time to state authorities for trial on his state charges. *Id.* at 151. Unlike here, it cannot be said that Bozeman had not been "returned" to the original place of confinement or its custodial care; rather, Bozeman was returned to the original prison's custody for nearly a month. As such, *Bozeman* is inapposite. Regardless,

3. The petition for a writ of *habeas corpus*, [ECF 1], is **DENIED**; and

4. No probable cause exists to issue a certificate of appealability.[2]

The Clerk of Court is directed to mark this matter **CLOSED**.

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

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in light of the clear distinction between this case and *Bozeman*, it cannot be said that the Superior Court's application of federal law, including its interpretation of *Bozeman*, was unreasonable.

In summary, this Court agrees with the Magistrate Judge's analysis and conclusions and, therefore, finds that the Magistrate Judge did not commit error in her report. Accordingly, Petitioner's objections are overruled, and the R&R is adopted and approved in its entirety.

[2] A district court may issue a certificate of appealability only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). A petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). For the reasons set forth in the R&R, this Court concludes that no probable cause exists to issue such a certificate in this action because Petitioner has not made a substantial showing of the denial of any constitutional right. Petitioner has not demonstrated that reasonable jurists would find this Court's assessment "debatable or wrong." *Slack*, 529 U.S. at 484. Consequently, there is no basis for the issuance of a certificate of appealability.

APPENDIX

"B"

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

KEITH DAVIS,	:	
	:	
Petitioner,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 20-2845
SUPERINTENDENT – SCI HOUTZDALE, et al.,	:	
	:	
	:	
Respondents.	:	

REPORT AND RECOMMENDATION

MARILYN HEFFLEY, U.S.M.J. **June 29, 2021**

This is a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by Keith Davis ("Petitioner" or "Davis"), a prisoner incarcerated at the State Correctional Institution in Houtzdale, Pennsylvania. For the following reasons, I recommend that Davis' habeas petition be denied.

I. FACTUAL AND PROCEDURAL HISTORY

The crimes giving rise to Davis' habeas petition occurred on September 7, 2006 in Philadelphia, Pennsylvania. Opinion at 2, Commonwealth v. Davis, No. 1299 EDA 2010 (Pa. Super. Ct. Apr. 21, 2011) [hereinafter "Super. Ct. Op."]. The Pennsylvania Superior Court summarized the relevant facts as follows:

> On September 7, 2006, at 52nd Street and Lancaster Avenue in Philadelphia, [Davis] shot Maurice Ragland [("Ragland")] twice in the head. The incident occurred following an earlier altercation wherein [Davis] accused Ragland of stealing a jar full of change from [Davis'] car. On the day in question, [Davis] was hiding in a vacant lot and called out to Ragland asking where he was going. [Davis] appeared to be hiding something. Ragland responded that he was going to the store and asked [Davis] if he needed anything. [Davis] did not respond. Ragland heard [Davis] come up behind him quickly, so he turned and faced [Davis]. [Davis] aimed a revolver at

> Ragland and shot him twice. Ragland was shot in the forehead and through the jaw and neck. When police arrived, Ragland identified [Davis] as his shooter. Ragland was taken to the hospital and several days later he again identified [Davis] from a photo array. Ragland spent three months in recovery. He had his jaw wired shut, lost nine teeth, and, at the time of trial, continued to have left-sided weakness due to injury to his spine.

Id. In early 2009, prior to his jury trial for the September 7, 2006 crimes, Davis was a federal prisoner housed at FCI-Cumberland in Cumberland, Maryland. Opinion at *1, Commonwealth v. Davis, No. 3725 EDA 2017, 2019 WL 4724690 (Pa. Super. Ct. Sept. 26, 2019) [hereinafter "PCRA Super. Ct. Op."]. In February 2009, Davis initiated the final disposition of the charges pending against him in Pennsylvania pursuant to Article III of the Interstate Agreement on Detainers Act ("IADA").[1] Id. On April 2, 2009, two Pennsylvania transport officers escorted Davis to Philadelphia County to be arraigned on the state charges. Id.

On March 25, 2010, after a jury trial in the Philadelphia County Court of Common Pleas, Davis was convicted of attempted murder, aggravated assault, carrying a firearm on a public street, and possession of an instrument of crime. Opinion at 1, Commonwealth v. Davis, No. CP-51-CR-0007071-2009 (Pa. Ct. Com. Pl. Phila. Cnty. Nov. 15, 2010) [hereinafter "Rule 1925 Op."]. On May 6, 2010, the trial court imposed an aggregate sentence of 25 to 50 years' imprisonment. Id.

On May 7, 2010, the trial court appointed counsel to represent Davis on direct appeal. Id. Counsel filed an Anders[2] brief presenting one issue for review: whether the evidence was sufficient to establish the elements of the crimes charged. Super. Ct. Op. at 3. Counsel also filed an application to withdraw from the representation. Id. On April 21, 2011, the Superior Court granted counsel's application and affirmed Davis' judgment of sentence, finding that there was

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[1] See infra Section III(A) for a detailed discussion of the IADA.

[2] See Anders v. California, 386 U.S. 738 (1967).

sufficient evidence to support his convictions. Id. at 1, 6-8. Davis did not file an appeal with the Pennsylvania Supreme Court. See Docket at 11, Commonwealth v. Davis, No. CP-51-CR-0007071-2009 (Pa. Ct. Com. Pl. Phila. Cnty.) [hereinafter "Docket"].

On September 16, 2011, Davis filed a timely pro se petition for collateral relief pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §§ 9541-9546. Opinion at 1, Commonwealth v. Davis, No. CP-51-CR-0007071-2009 (Pa. Ct. Com. Pl. Phila. Cnty. Jan. 12, 2018) [hereinafter "PCRA Ct. Op."]. The PCRA court appointed counsel to represent Davis and on April 9, 2013, his counsel filed Davis' first amended PCRA petition seeking a new trial. Opinion at 2, Commonwealth v. Davis, No. CP-51-CR-0007071-2009 (Pa. Ct. Com. Pl. Phila. Cnty. June 13, 2018) [hereinafter "PCRA Ct. Suppl. Op."]. Second and third amended PCRA petitions were filed on September 27, 2013 and June 27, 2014, respectively. Id. On January 13, 2016, the PCRA court allowed Davis' counsel to withdraw and Davis retained new PCRA counsel. PCRA Ct. Op. at 1. The PCRA court granted Davis' request for an evidentiary hearing on January 6, 2017, id. at 2, and on January 18, 2017, his counsel filed a fourth amended PCRA petition arguing that Davis' trial counsel was ineffective in failing to request that the charges against him be dismissed with prejudice pursuant to Article III and/or Article IV(e) of the IADA. PCRA Ct. Suppl. Op. at 2. On October 17, 2017, after four evidentiary hearings, the Commonwealth filed a motion to dismiss Davis' petition, which the PCRA court granted on October 20, 2017. Id.

On November 9, 2017, Davis filed a timely pro se notice of appeal with the Pennsylvania Superior Court. Id. On November 22, 2017, the PCRA court ordered Davis to file a statement of matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Id. Because Davis failed to comply with this order, the PCRA court issued an opinion on

January 12, 2018 dismissing Davis' appeal. Id. On January 16, 2018, Davis filed a pro se motion for extension of time to file his Rule 1925(b) statement, which was granted. Id. Davis then filed his Rule 1925(b) statement on January 22, 2018. Id. On February 5, 2018, the Pennsylvania Superior Court remanded this matter to the PCRA court for a determination of whether Davis' PCRA counsel should be permitted to withdraw "and to take further action as required to protect [Davis'] right to appeal." Id. On February 16, 2018, the PCRA court permitted Davis' counsel to withdraw, and then appointed new counsel for Davis on February 23, 2018. Id. at 2-3. The PCRA court ordered Davis to file a Rule 1925(b) statement on March 29, 2018. Id. at 3. One day later, on March 30, 2018, Davis' PCRA counsel filed a "petition to vacate briefing schedule and to remand to file counseled concise statement of errors complained of on appeal." Id. On April 18, 2018, Davis' PCRA counsel filed a motion for an extension of time. Id. On April 23, 2018, the Pennsylvania Superior Court again remanded this matter to the PCRA court, this time to allow Davis to file a counseled Rule 1925(b) statement within 21 days. Id.; see also PCRA Super. Ct. Op. at *3. The Superior Court also directed the PCRA court to file a supplemental Rule 1925(a) opinion. PCRA Super. Ct. Op. at *3; PCRA Ct. Suppl. Op. at 3. On May 14, 2018, Davis filed a counseled Rule 1925(b) statement, arguing that: (1) the PCRA court's denial of his amended PCRA petition was in error because the Commonwealth violated Article III and/or Article IV of the IADA; and (2) his trial counsel was ineffective in failing to file a motion to dismiss the charges against him in light of the Commonwealth's alleged violation of the IADA. PCRA Super. Ct. Op. at *3 (quoting Rule 1925(b) Statement at 1-2, Commonwealth v. Davis, No. CP-51-CR-0007071-2009 (Pa. Ct. Com. Pl. Phila. Cnty. May 14, 2018)). On June 13, 2018, the PCRA court issued its supplemental opinion affirming the dismissal of Davis' PCRA petition. PCRA Ct. Suppl. Op. at 1.

On appeal to the Superior Court, Davis raised two issues: (1) ineffective assistance of trial counsel for failing to file a motion to dismiss the charges against him because he was not brought to trial within 180 days prior to being returned to his original place of imprisonment in violation of Article III of the IADA; and (2) the trial court's sentence was illegal because the Commonwealth returned Davis to his original place of imprisonment before trial in violation of Article III of the IADA. Brief for Appellant at *2, Commonwealth v. Davis, No. 3725 EDA 2017, 2019 WL 2564288 (Pa. Super. Ct. Feb. 26, 2019) [hereinafter "Br. for App."]. On September 26, 2019, the Superior Court affirmed the denial of Davis' PCRA petition. PCRA Super. Ct. Op. at *1, *6. Thereafter, the Pennsylvania Supreme Court denied Davis' petition for allowance of appeal on March 16, 2020. Commonwealth v. Davis, 227 A.3d 312 (Pa. 2020).

On May 20, 2020, Davis filed a petition for a writ of habeas corpus in this Court,[3] seeking relief on the following grounds:

1. Ineffective assistance of trial counsel for failure to file a motion to dismiss the charges against him after the Commonwealth returned him to his original place of imprisonment before trial in violation of Article III(d) of the IADA;

2. The trial court violated his constitutional rights and Article III(d) of the IADA by imposing a sentence that was illegal because the Commonwealth returned him to his original place of imprisonment before trial;

3. Ineffective assistance of all prior counsel for failure to challenge the Commonwealth's violation of the IADA; and

4. The trial court violated his constitutional rights and Article III(a) of the IADA by granting continuances when Davis and/or his counsel were not present.

Pet. at 5-11.

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[3] Pursuant to the prison mailbox rule, a pro se prisoner's habeas application is deemed filed on the date he or she delivers it to prison officials for mailing to the district court, not on the date the application was filed with the court. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). As Davis avers that he placed his petition in the prison mailing system on May 20, 2020, Pet. (Doc. No. 1) at 14, I will use that date as the date his petition was filed.

II. APPLICABLE LEGAL STANDARDS

A. Standard for Issuance of a Writ of Habeas Corpus

Congress, by its enactment of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), significantly limited the federal courts' power to grant a writ of habeas corpus. Where the claims presented in a federal habeas petition were adjudicated on the merits in the state courts, a federal court shall not grant habeas relief unless the adjudication:

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).

The United States Supreme Court has made clear that a writ may issue under the "contrary to" clause of § 2254(d)(1) only "if the state court applies a rule different from the governing law set forth in [United States Supreme Court] cases, or if [the state court] decides a case differently than [the United States Supreme Court has] done on a set of materially indistinguishable facts." Bell v. Cone, 535 U.S. 685, 694 (2002) (citing Williams v. Taylor, 529 U.S. 362, 405-06 (2000)). A writ may issue under the "unreasonable application" clause only where there has been a correct identification of a legal principle from the Supreme Court, but the state court "unreasonably applies it to the facts of the particular case." Id. (citing Williams, 529 U.S. at 407-08). This requires a petitioner to demonstrate that the state court's analysis was "objectively unreasonable." Woodford v. Visciotti, 537 U.S. 19, 25 (2002).

State court factual determinations are also given considerable deference under the AEDPA. Palmer v. Hendricks, 592 F.3d 386, 391-92 (3d Cir. 2010) (quoting Lambert v. Blackwell, 387 F.3d 210, 234 (3d Cir. 2004)). A petitioner must establish that the state court's

adjudication of the claim "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)(2).

B. Exhaustion and Procedural Default

"[A] federal habeas court may not grant a petition for a writ of habeas corpus . . . unless the petitioner has first exhausted the remedies available in the state courts." Lambert v. United States, 134 F.3d 506, 513 (3d Cir. 1997) (citing 28 U.S.C. § 2254(b)(1)(A); Toulson v. Beyer, 987 F.2d 984, 986-87 (3d Cir. 1993)). The exhaustion requirement mandates that the claim "have been 'fairly presented' to the state courts." Bronshtein v. Horn, 404 F.3d 700, 725 (3d Cir. 2005) (quoting Picard v. Connor, 404 U.S. 270, 275 (1971)). Fair presentation requires that a petitioner have pursued his or her claim "through one 'complete round of the State's established appellate review process.'" Woodford v. Ngo, 548 U.S. 81, 92 (2006) (quoting O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999)). The procedural default barrier, in the context of habeas corpus, also precludes federal courts from reviewing a state petitioner's habeas claims if the state court decision is based on a violation of state procedural law "that is independent of the federal question and [is] adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991). "[I]f [a] petitioner failed to exhaust state remedies and the court to which the petitioner would be required to present his [or her] claims in order to meet the exhaustion requirement would now find the claims procedurally barred. . . . there is a procedural default for [the] purposes of federal habeas." Id. at 735 n.1 (citing Harris v. Reed, 489 U.S. 255, 269-70 (1989); Teague v. Lane, 489 U.S. 288, 297-98 (1989)); see also McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999).

To survive procedural default in the federal courts, a petitioner must either "demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman, 501 U.S. at 750.

C. Ineffective Assistance of Counsel

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court set forth the standard for claims of ineffective assistance of counsel in violation of the Sixth Amendment. Counsel is presumed to have acted effectively unless the petitioner demonstrates both that "counsel's representation fell below an objective standard of reasonableness" and that there was "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 686-88, 693-94.

To satisfy the reasonable performance prong of the analysis, a petitioner must "show 'that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.'" Harrington v. Richter, 562 U.S. 86, 104 (2011) (quoting Strickland, 466 U.S. at 687). In evaluating counsel's performance, the reviewing court "must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance" and that there are "countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Id. at 104, 106 (quoting Strickland, 466 U.S. at 689). The reviewing court must "'reconstruct the circumstances of counsel's challenged conduct' and 'evaluate the conduct from counsel's perspective at the time.'" Id. at 107 (quoting Strickland, 466 U.S. at 689). "[I]t is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy." Id. at 111.

To satisfy the prejudice prong of the analysis, a petitioner must demonstrate that counsel's errors were "so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable." Id. at 104 (quoting Strickland, 466 U.S. at 687). Thus, a petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (quoting Strickland, 466 U.S. at 694). This determination must be made in light of "the totality of the evidence before the judge or jury." Strickland, 466 U.S. at 695.

III. DISCUSSION

A. Davis' Claim that His Trial Counsel was Ineffective in Failing to File a Motion to Dismiss the Charges Against Him

Davis argues that his trial counsel was ineffective in failing to file a motion to dismiss the charges against him after the Commonwealth returned him to his original place of imprisonment before trial in violation of Article III(d) of the IADA. Pet. at 5. This claim is procedurally defaulted and substantively meritless.

The IADA "is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. 1, § 10, cl. 3," Carchman v. Nash, 473 U.S. 716, 719 (1985), that has been adopted by 48 states,[4] the federal government, and the District of Columbia, Alabama v. Bozeman, 533 U.S. 146, 148 (2001). See also 18 U.S.C. app. 2, § 2, art. III. It "encoura[g]e[s] [the] expeditious and orderly disposition of outstanding criminal charges filed against a person incarcerated in a different jurisdiction," Cooney v. Fulcomer, 886 F.2d 41, 43 (3d Cir. 1989), and "seeks to minimize the consequent interruption of the prisoner's ongoing prison term," Bozeman,

[4] Pennsylvania adopted the IADA in 1959. See 42 Pa. Cons. Stat. § 9101.

533 U.S. at 148, by "creat[ing] uniform procedures for lodging and executing a detainer," id. "IAD[A] violations are cognizable in federal habeas corpus because the IAD[A] is a 'law of the United States' for purposes of 28 U.S.C. § 2254." McCandless, 172 F.3d at 263 (citations omitted); see also Cooney, 886 F.2d at 43 n.1 ("The IAD[A], since it has been approved by Congress pursuant to the Compact Clause . . . is a federal law subject to federal rather than state construction. Thus, the federal courts have habeas corpus jurisdiction pursuant to 28 U.S.C. § 2254, over alleged violations of the IAD[A]." (internal citations omitted)).

The "procedure[s] by which a prisoner against whom a detainer has been filed can demand a speedy disposition of the charges giving rise to the detainer" are set forth in Article III of the IADA. United States v. Mauro, 436 U.S. 340, 351 (1978). These procedures, as summarized by the United States Supreme Court in Mauro, provide that:

> The warden of the institution in which the prisoner is incarcerated is required to inform him promptly of the source and contents of any detainer lodged against him and of his right to request final disposition of the charges. Art. III(c). If the prisoner does make such a request, the jurisdiction that filed the detainer must bring him to trial within 180 days.[18] Art. III(a). The prisoner's request operates as a request for the final disposition of all untried charges underlying detainers filed against him by that State, Art. III(d), and is deemed to be a waiver of extradition. Art. III(e).

Id.; see also 18 U.S.C. app. 2, § 2, art. III; 42 Pa. Cons. Stat. § 9101, art. III. Once a prisoner is in the custody of the receiving state, the prosecuting authority is subject to the anti-shuttling provision of Article III(d), which states:

> If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

See 18 U.S.C. app. 2, § 2, art. III(d); 42 Pa. Cons. Stat. § 9101, art. III(d). This provision seeks

"to prevent transfer back and forth between competing jurisdictions, its theory being that such transfers undermine the right to a speedy trial and the rehabilitative process of the system in which the prisoner is currently serving a sentence." Cooney, 886 F.2d at 44 (quoting United States v. Williams, 615 F.2d 585, 588 (3d Cir. 1980)). Although "minor, technical violations of the IAD[A] are not sufficient to require granting habeas relief[,] . . . violations of the anti-shuttling provision . . . have been found by this court to be so 'fundamental' as to warrant habeas relief without a showing of prejudice." Id. (internal citations omitted).[5]

As a threshold matter, Davis' claim is procedurally defaulted because he failed to raise this claim before the PCRA court. See PCRA Super. Ct. Op. at *4. As a result, the Pennsylvania Superior Court held that he had waived the issue, reasoning:

> On its face, [Davis'] first issue may not appear to represent a drastic departure from the issue preserved in his Rule 1925(b) statement. However, a review of [Davis'] argument proves otherwise. In his brief, [Davis] focuses on the failure to bring [him] to trial "within 180 days **prior to being returned to FCI-Cumberland.**" Specifically, [Davis] argues that he was returned to FCI-Cumberland in April 2009 when the transporters mistakenly embarked on a return trip to FCI-Cumberland, only to be told upon arrival that they were to take [him] back to Pennsylvania. He asserts that the provisions of Article III(d) require that the trial court enter an order dismissing the state charges. Therefore, "[t]he Commonwealth forfeited its ability to prosecute [Davis] when it returned him to FCI-Cumberland without first bring[ing] him to trial within 180 days."
>
> It is well settled that an issue not preserved in an appellant's Rule 1925(b) statement is waived for appeal. See, e.g., Commonwealth v. Castillo, 888 A.2d 775, 780 (Pa. 2005) (reaffirming the bright-line rule first enunciated in Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998), that "issues not raised in a P[ennsylvania] R[ule] [of] A[ppellate] P[rocedure] 1925(b) statement will be deemed waived."). Because [Davis] did not preserve any

[5] Cooney addresses Article IV(e) of the IADA, which contains an anti-shuttling provision identical to that found in Article III(d). See Cooney, 886 F.2d at 44; see also 18 U.S.C. app. 2, § 2, arts. III(d), IV(e); 42 Pa. Cons. Stat. § 9101, arts. III(d), IV(e). The difference between these two provisions is that Article IV is triggered when the receiving state, not the prisoner, requests temporary custody of the defendant. See 18 U.S.C. app. 2, § 2, arts. III(d), IV(e); 42 Pa. Cons. Stat. § 9101, arts. III(d), IV(e).

> issue relating to his "return to FCI-Cumberland," the issue is waived.

PCRA Super. Ct. Op. at *4 (citations to the record omitted) (emphasis in original). Because the Superior Court's decision was based on independent and adequate state grounds, Davis' claim is procedurally defaulted and not subject to habeas review.[6] See Edwards v. Walsh, No. 13-1010, 2013 WL 4457365, at *4 (E.D. Pa. Aug. 21, 2013) (holding that failure to comply with Rule 1925(b) "constitutes procedural default on independent and adequate state grounds"); see also Buck v. Colleran, 115 F. App'x 526, 528 (3d Cir. 2004).

In addition to being procedurally defaulted, Davis' claim is plainly meritless. The Pennsylvania Superior Court summarized the circumstances surrounding Davis' anti-shuttling claim as follows:

> For reasons not important to this appeal, as of early 2009, prior to [Davis'] trial in Philadelphia County, [Davis] was a federal prisoner housed at FCI-Cumberland, in Cumberland, Maryland. In February 2009, he requested disposition of the pending state charges against him in Pennsylvania pursuant to Article III of the IADA. On or about April 2, 2009, he was

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[6] Davis also argues that the Superior Court's decision violated Pennsylvania Rule of Appellate Procedure 1925(b)(4) because his anti-shuttling claim was subsidiary to his speedy trial claim. Pet. at 55. Rule 1925(b)(4) states that "[e]ach error identified in the Statement will be deemed to include every subsidiary issue that was raised in the trial court." Pa. R. A. P. 1925(b)(4)(v). Davis' contention provides no basis for habeas relief because "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Moreover, even if Davis' claim was deemed reviewable, it is meritless because his anti-shuttling claim is not subsidiary to his speedy trial claim. Rather, these claims stem from two different subsections of Article III and involve separate analyses. Violations of the anti-shutting clause turn on whether a prisoner was returned to his or her original place of imprisonment prior to trial. See 18 U.S.C. app. 2, § 2, art. III(d); 42 Pa. Cons. Stat. § 9101, art. III(d). Violation of the speedy trial clause, on the other hand, hinges on whether there was good cause for granting continuances that delayed the trial and/or whether the prisoner and/or his or her counsel were present when the continuances were granted. See 18 U.S.C. app. 2, § 2, art. III(a); 42 Pa. Cons. Stat. § 9101, art. III(a). Further, these two types of claims are routinely addressed separately by the federal courts. See, e.g., United States v. Ross, 243 F.3d 375, 378-79 (7th Cir. 2001); United States v. Johnson, 953 F.2d 1167, 1170-71 (9th Cir. 1992); United States v. Roy, 830 F.2d 628, 632-36 (7th Cir. 1987); United States v. Ward, Nos. 13-40066-01, 14-40139-01, 2014 WL 7428535, at *2-5 (D. Kan. Dec. 31, 2014); see also Casper v. Ryan, 822 F.2d 1283, 1290 (3d Cir. 1987).

> transported by two Pennsylvania transport officers to Philadelphia County and was processed on the state charges.
>
> According to testimony presented at an evidentiary PCRA hearing on May 19, 2017, the transport officers prepared to return [Davis] to FCI-Cumberland following [Davis'] April 2009 arraignment in Philadelphia County. As the Commonwealth explains, and as is borne out by testimony from [Davis'] evidentiary hearings[:]
>
> > [w]hile they were in transit [from Philadelphia to Maryland], Ellen Roberts [("Roberts"])—an examiner in FCI[-]Cumberland's records office—received a phone call informing her that [Davis] should not be accepted back into federal custody. When [Davis] arrived with detectives at the receiving and discharge wing of FCI[-]Cumberland shortly after noon, Roberts informed them that [Davis] needed to be taken back to Philadelphia, and advised them to contact their office.
> >
> > While the detectives sorted out [Davis'] status, FCI[-]Cumberland placed him in a holding cell in the receiving and discharge wing for approximately thirty-six minutes. [Davis] was never searched, screened for safety concerns, screened for medical purposes, photographed, or had his fingerprint taken—all of which would have been required if he were readmitted to FCI[-]Cumberland's general population. Instead, a Philadelphia detective stayed with [Davis] during the thirty-six minutes he waited before they transported him back to Philadelphia.

PCRA Super. Ct. Op. at *1-2 (citations to the record omitted). Based on these facts, the Superior Court rejected Davis' anti-shuttling claim as meritless on PCRA appeal, reasoning:

> Even if not waived, [Davis'] argument would fail. The record supports the conclusion that [Davis] was not "returned" to Maryland. Rather, as reflected above, he remained under the supervision of the Pennsylvania detectives who transported him and was never processed back into FCI-Cumberland. See, e.g., Commonwealth v. Merlo, 364 A.2d 391 (Pa. Super. 1976). In Merlo—although in the context of Article IV(e), this Court explained that "[r]egardless of the time limitation in Article IV(c), Article IV(e) requires that a prisoner **not be returned to the custody of the sending state untried**; if he [or she] is the indictments, informations, or complaints must be dismissed with prejudice." Id. at 396 (emphasis added). Here, [Davis] was not "returned" to Maryland before trial. Moreover, [Davis'] situation is not analogous to that addressed in [] Bozeman, 533 U.S. 146 [], another Article IV case. As the United States Supreme Court explained, the IADA "basically (1) gives a prisoner the right to demand a trial within 180 days [under Art. III]; and (2) gives a State the right to obtain

> a prisoner for purposes of trial, in which case the State (a) must try the prisoner within 120 days of his [or her] arrival, and (b) must not return the prisoner to his [or her] 'original place of imprisonment' prior to that trial [under Art IV]." Id. at 151. Bozeman was returned to a Florida federal prison after being arraigned on state charges in Alabama, obtaining counsel, and spending one night in an Alabama prison. Clearly, Bozeman was returned to his "original place of imprisonment" prior to the trial in state court. By contrast, [Davis] was not returned to his "original place of imprisonment" in FCI-Cumberland. Rather, for a thirty-six minute period, he was detained in the receiving and discharge wing at the facility while remaining under the supervision of Pennsylvania authorities. No steps were taken that would have been necessary for him to be received back into that facility.

PCRA Super. Ct. Op. at *4 n.4 (emphasis in original).

The Superior Court's determination that Davis' claim lacked merit was neither contrary to nor an unreasonable application of federal law. See 28 U.S.C. § 2254(d)(1). It is the prisoner's custody, not physical geographical location, that determines when a prisoner is returned to his or her original place of imprisonment under the IADA. See, e.g., United States v. Hunnewell, 891 F.2d 955, 959 (1st Cir. 1989) ("We rule that, so long as custodial responsibility actually shifts and applicable temporal limits are observed, retention of the prisoner in the same institutional setting cannot signify that he [or she] was 'returned to [his or her] original place of imprisonment' within the meaning of Article IV(e) of the IAD[A]."); Shigemura v. United States, 726 F.2d 380, 381 (8th Cir. 1984) (per curiam) ("[T]he government did not violate the terms of the IAD[A]. Because there is no federal penal institution in the St. Louis metropolitan area, the Justice Department has approved the use of the St. Louis County jail to hold federal prisoners awaiting trial. The fact that [the prisoner] was confined in that facility both as a state and federal prisoner was coincidental, but hardly violative of the IAD[A]."); United States v. Kelley, 300 F. Supp. 2d 224, 230 (D. Mass. 2003), aff'd, 402 F.3d 39 (1st Cir. 2005) ("Therefore, the fact that [the defendant] was returned to Norfolk would not have established an

IAD[A] violation if he remained in federal custody. Rather, the inquiry must focus on whether [the defendant] was returned to state custody."); see also State v. Robertson, 182 S.W.3d 747, 755 (Mo. Ct. App. 2006) ("[T]he physical geographical location of the prisoner is not the significant fact under the IAD[A]. The significant fact is the prisoner's custody."). Here, custodial responsibility of Davis never shifted from the Philadelphia transporting officers to FCI-Cumberland, despite Davis' physical presence at FCI-Cumberland. Indeed, during one of Davis' PCRA evidentiary hearings, Roberts[7] testified about the standard Bureau of Prisons ("BOP") procedure for any inmate returning to the prison, explaining that:

> There is a standard procedure for basically any BOP facility. The inmate would arrive with the transporting officers. The officers would be identified, the inmate would be identified to make sure he is the correct person being returned to the correct facility.
>
> They are escorted to the Receiving & Discharge area. Normally what would happen is any restraints would be removed. The inmate would be strip searched by the Receiving & Discharge staff. And then the inmate would be put through what is called a social screening to determine whether they were eligible to be placed back into general population to make sure there's no type of gang affiliations and that he's safe or if he would have to be taken to the Special Housing Unit based on what the reason was he went out before for his own safety or for the safety of others. He would go through a medical screening to make sure he didn't have any medical issues when he returned, or if he had some sort of medical issues prior to leaving to make sure he was receiving medication or provided medication, if needed. He would be finger printed, photograph taken. And then once that is all completed and depending on where he would be going whether it's back to general population or Special Housing, then he would be escorted to Special Housing or released to the general population based on the decision.

May 19, 2017 Tr. at 45-47. None of these steps were taken at FCI-Cumberland to regain custody

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[7] Roberts was a legal instruments examiner in the records office at FCI-Cumberland from 1994 to 2012. Transcript of Record at 24-25, Commonwealth v. Davis, No. 51-CR-0007071-2017 (Pa. Ct. Com. Pl. Phila. Cnty. May 19, 2017) [hereinafter "May 19, 2017 Tr."]. Her position required her to work with inmate records and "prepare documents for inmates releasing and going on interstate agreements and state writs and federal writs." Id. at 25.

of Davis. Id. at 44-45, 47, 49. Instead, as Roberts testified:

> [w]hen [Davis] was returned, and I was here the day that it happened, he was held in the Receiving & Discharge area while the transporting officers made contact with their office to verif[y] he needed to be returned. They used the restroom and once everything was clarified, then they left again.

Id. at 48. Davis spent 36 minutes in the receiving and discharge area and the Philadelphia transporting officers retained custodial responsibility for Davis at all times. Id. at 43-44; Transcript of Record at 110-11, Commonwealth v. Davis, No. 51-CR-0007071-2017 (Pa. Ct. Com. Pl. Phila. Cnty. May 23, 2017) [hereinafter "May 23, 2017 Tr."] (stipulating that "[w]hat Officer Lewis would testify to is that either Officer Lewis or . . . one of the other southwest detective warrant unit officers was where the defendant was; not in a cell with him. They did not leave the facility until they left with [Davis]. They took him into the facility, remained in the facility during the time the defendant was there in the facility and they took him with them when they left."). As there was no transfer of custody, Davis was never returned to his original place of imprisonment and consequently, there was no violation of Article III(d)'s anti-shuttling provision. Thus, there was no basis for Davis' counsel to file a motion to dismiss the charges against him. Accordingly, his trial counsel cannot be deemed ineffective for failing to raise a meritless claim. Real v. Shannon, 600 F.3d 302, 310 (3d Cir. 2010) ("[T]rial counsel was not ineffective for failing to raise a meritless claim.").

B. Davis' Claim that the Trial Court Imposed an Illegal Sentence

Davis asserts that the trial court violated his constitutional rights and Article III(d) of the IADA by imposing a sentence that was illegal because the Commonwealth returned him to his original place of imprisonment before trial. Pet. at 6-7. This claim is procedurally defaulted and substantively meritless.

As an initial matter, this claim is procedurally defaulted. On PCRA appeal, Davis argued

that Article III of the IADA renders "the trial court's judgment of sentence illegal because the charges against [him] are void and without legal 'force or effect' based upon the Commonwealth's return of him to his original place of confinement prior to trial." Br. for App. at *2. The Superior Court rejected this claim, noting that "[t]o the extent [Davis] might suggest the trial court lacked jurisdiction to try or to sentence him, [he] cannot succeed. This Court has previously ruled that Article IV(e) of the IADA 'is not a jurisdictional provision, but a personal statutory right. As such, it is waivable.'" PCRA Super. Ct. Op. at *6 (internal citations omitted). The Superior Court further elaborated that "Article III(d) . . . substantially parallels Article IV(e), . . . [and] [j]ust as Article IV(e) is not a jurisdictional provision, Article III([d]) is not a jurisdictional provision." Id. (internal citations omitted). Consequently, the Superior Court held that Davis had waived this issue because he was "not raising a legality of sentence issue or an issue that is even cognizable under the PCRA." Id. at *5. Davis' failure to comply with the pleading requirements of the PCRA constitutes an independent and adequate state ground, rendering his claim procedurally defaulted and precluding habeas review. Thomas v. Sec'y, Pa. Dep't of Corr., 495 F. App'x 200, 205-06 (3d Cir. 2012); Griggs v. DiGuglielmo, No. 06-1512, 2007 WL 2007971, at *15-16 (E.D. Pa. July 3, 2007) (citing Buck, 115 F. App'x at 527-28).

To the extent that Davis seeks to excuse his default under Martinez v. Ryan, 566 U.S. 1 (2012), his claim is unpersuasive because Martinez only applies to defaulted ineffective assistance of trial counsel claims—not defaulted trial court error claims. Martinez, 566 U.S. at 9 ("This opinion qualifies Coleman by recognizing a narrow exception: Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."); see also Norris v. Brooks, 794 F.3d 401, 404 (3d Cir. 2015) ("The Martinez Court made clear, however, that this is a 'narrow exception.'

Most importantly, the Court stated that the exception applies only to attorney error in initial-review collateral proceedings[.]" (internal citations omitted)); Stroll v. Johnson, No. 13-1675, 2013 WL 6074160, at *1 (3d Cir. June 11, 2013) (holding that Martinez does not apply to a procedurally defaulted claim of judicial error); Robles v. Luther, No. 18-3267, 2018 WL 9721020, at *9 (E.D. Pa. Dec. 19, 2018), report and recommendation adopted, No. 18-3267, 2019 WL 4735840 (E.D. Pa. Sept. 27, 2019) ("However, Martinez does not excuse the default of claims of trial court error." (internal citations omitted)). Therefore, Davis' unexhausted and procedurally defaulted claim is ineligible for habeas relief. Coleman, 501 U.S. at 729; McCandless, 172 F.3d at 260.

Absent procedural default, Davis' claim is without merit. As discussed supra in Section III(A), the Commonwealth did not violate the anti-shuttling provision of Article III(d) of the IADA because FCI-Cumberland never regained custodial responsibility of Davis. Thus, Davis was never returned to his original place of imprisonment for purposes of the IADA.

C. Davis' Claim That All of His Prior Counsel Were Ineffective in Failing to Challenge the Commonwealth's Violation of the IADA

Davis next contends that all of his prior counsel, including pre-trial counsel, direct appeal counsel, and PCRA counsel, were ineffective in failing to challenge the Commonwealth's alleged violation of the IADA. Pet. at 8-9. This claim is procedurally defaulted and substantively meritless.

Davis' claim of ineffective assistance of pre-trial counsel and direct appeal counsel is procedurally defaulted because he did not raise this claim on PCRA appeal and thus, failed to fairly present the claim to the Pennsylvania state courts. Bronshtein, 404 F.3d at 725 (quoting Picard, 404 U.S. at 275 (holding that a petitioner must fairly present[]" the claim to the state courts")); Keller v. Larkins, 251 F.3d 408, 413 (3d Cir. 2001) (quoting McCandless, 172 F.3d at

262 (explaining that a petitioner must "'present a federal claim's factual and legal substance to the state courts in a manner that puts them on notice that a federal claim is being asserted'")). Moreover, Davis has failed to show that his constitutional claim falls within any statutory exceptions to 42 Pa. Const. Stat. § 9545(b). As a result, a Pennsylvania court would find any attempt to raise this claim now through a new PCRA petition to be time-barred.

Furthermore, Davis' procedurally defaulted ineffective assistance of pre-trial counsel and direct appeal counsel claim is not excusable under Martinez. Martinez does not excuse Davis' defaulted ineffective assistance of pre-trial counsel claim because, as discussed supra in Section III(A), his underlying claim lacks merit. Davis' ineffective assistance of direct appeal counsel claim is also inexcusable because Martinez does not apply to procedurally defaulted ineffective assistance of direct appeal counsel claims. Davila v. Davis, 137 S. Ct. 2058, 2063-66 (2017); see also Workman v. Superintendent Albion SCI, 915 F.3d 928, 935 n.11 (3d Cir. 2019); Richardson v. Superintendent Coal Township SCI, 905 F.3d 750, 760 (3d Cir. 2018); Greene v. Superintendent Smithfield SCI, 882 F.3d 443, 445 (3d Cir. 2018).

Davis' ineffective assistance of PCRA counsel claim is likewise procedurally defaulted.[8] Indeed, "claims of PCRA counsel's ineffectiveness may not be raised for the first time on appeal." Commonwealth v. Henkel, 90 A.3d 16, 20 (Pa. Super. Ct. 2014). Here, Davis failed to raise his ineffective assistance of PCRA counsel claim in a serial PCRA petition or in a response to a notice of dismissal before the PCRA court. Therefore, his claim is procedurally defaulted and ineligible for habeas review. Edwards v. Tice, No. 17-5583, 2020 WL 6946595, at *5 (E.D.

[8] To the extent that Davis asserts a free-standing claim of ineffectiveness with respect to all prior PCRA counsel, his claim is non-cognizable on habeas review. See Pennsylvania v. Finley, 481 U.S. 551, 555-56 (1987) (holding that there is no constitutional right to counsel in collateral post-conviction proceedings).

Pa. Oct. 22, 2020) (citing Commonwealth v. Ford, 44 A.3d 1190, 1200 (Pa. Super. Ct. 2012) ("Nonetheless, a majority of the Supreme Court agrees that issues of PCRA counsel effectiveness must be raised in a serial PCRA petition or in response to a notice of dismissal before the PCRA court.")). Moreover, because the PCRA requires that any post-conviction petition, including second or subsequent petitions, be filed within one year of the date the judgment of sentence becomes final, 42 Pa. Cons. Stat. § 9545(b), and Davis does not assert that his claim falls within any statutory exceptions to that rule, a Pennsylvania court would find any attempt to raise the claim now through a new PCRA petition to be time-barred.

Aside from being procedurally defaulted, Davis' ineffective assistance of prior counsel claim is unpersuasive. As discussed supra in Section III(A), Davis' 36-minute visit to FCI-Cumberland did not violate Article III(d)'s anti-shuttling provision since custodial responsibility never shifted from the Philadelphia transporting officers to FCI-Cumberland. Therefore, Davis was never returned to his original place of imprisonment pursuant to the IADA. Thus, Davis' ineffective assistance of all prior counsel claim does not entitle him to habeas relief because counsel cannot be ineffective for failing to raise an unmeritorious claim. Real, 600 F.3d at 310.

D. Davis' Claim Challenging the Propriety of the Trial Court Granting Continuances

In his final claim for relief, Davis argues that the trial court violated his constitutional rights and Article III(a) of the IADA by granting continuances outside of his and/or his trial counsel's presence.[9] Pet. at 9. His claim is procedurally defaulted and substantively meritless.

[9] Davis also asserts that the Commonwealth never notified the trial court that his case was governed by the IADA. Pet. at 9. This claim similarly lacks substance. The IADA does not require the Commonwealth to notify the trial court that the IADA applies to a particular case. Instead, this burden rests with "[t]he warden, commissioner of corrections, or other official having custody of the prisoner." 18 U.S.C. app. 2, § 2, art. III(c); 42 Pa. Cons. Stat. § 9101, art.

(Footnote continued on next page)

The claim is procedurally defaulted and time-barred because Davis failed to raise it on direct appeal and has failed to demonstrate that it falls within any statutory exception to 42 Pa. Const. Stat. § 9545(b). See Keller, 251 F.3d at 414. Additionally, as previously discussed, Martinez cannot excuse this default because it only applies to defaulted ineffective assistance of trial counsel claims, not defaulted trial court error claims. See Martinez, 566 U.S. at 9.

Notwithstanding that his claim is procedurally defaulted, there is no merit to Davis' claim. As discussed supra in Section III(A), Article III of the IADA sets forth the procedures by which a prisoner in one state, against whom a detainer has been filed in another state, may initiate the final disposition of the charges arising from the detainer. 18 U.S.C. app. 2, § 2, art. III; 42 Pa. Cons. Stat. § 9101, art. III. If a prisoner requests the resolution of the charges, then the prisoner must be brought to trial within 180 days. 18 U.S.C. app. 2, § 2, art. III; 42 Pa. Cons. Stat. § 9101, art. III. Article III(a), however, provides for an exception to the 180-day rule, namely "[t]hat, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." 18 U.S.C. app. 2, § 2, art. III(a); 42 Pa. Cons. Stat. § 9101, art. III(a). Here, the trial court granted continuances on April 8, 2009, May 1, 2009, July 6, 2009, July 20, 2009, July 27, 2009, and

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III(c). In any event, Davis' claim would still fail because the Commonwealth notified the trial court that Davis' case was governed by the IADA on several occasions. See, e.g., Transcript of Record at 53, Commonwealth v. Davis, No. 51-CR-0007071-2017 (Pa. Ct. Com. Pl. Phila. Cnty. June 6, 2017) ("Your Honor, I would ask that whatever date the Court gives it's consistent with the Interstate Agreement on Detainers and it's beyond the 31st date if counsel does not object to that being beyond that date."); May 23, 2017 Tr. at 104 ("The Commonwealth requested a continuance date under the Interstate Agreement on Detainers."); Transcript of Record at 3, Commonwealth v. Davis, No. 51-CR-0007071-2017 (Pa. Ct. Com. Pl. Phila. Cnty. Mar. 22, 2010) ("I believe that the Commonwealth needs to request that it be continued till tomorrow under the Interstate Agreement of Detainers Act.").

August 10, 2009,[10] and Davis was represented by counsel at each of those listings. See MC Tr. at 1 (noting that a public defender was present at the April 8, 2009 listing); May 23, 2017 Tr. at 104-07 (stipulating that assistant district attorneys involved in pre-trial listings would testify that defense counsel was present at the May, July, and August 2009 listings). Because Davis has failed to identify a single instance in which a continuance was granted in the absence of counsel, there was no violation of Article III(a) of the IADA.[11]

Davis also challenges the continuances that were granted at the July and August 2009 listings alleging that the presence of his court-appointed attorney, Robert Jovanov ("Attorney Jovanov"), was insufficient to satisfy the IADA. Pet. at 87-88. He argues that he had "permitted nobody the authority to represent him up to that point other than [Gerald] Stein" ("Attorney Stein"). Id. at 88.

The Sixth Amendment to the Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his [or her] defense."

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[10] Davis also contends that a continuance was granted in the absence of counsel on June 1, 2009, citing to the Municipal Court Transcript, or what he refers to as "PARS." Pet. at 112; see also Municipal Court Transcript at 2, Commonwealth v. Davis, No. MC-51-CR-0014837-2009 (Pa. Mun. Ct. Phila. Cnty.) (reproduced as Ex. B to Pet.) [hereinafter "MC Tr."]. Contrary to Davis' contention, there is no reference to a June 1, 2009 continuance in the Municipal Court Transcript. See MC Tr. at 2. Instead, the Municipal Court Transcript documents a June 10, 2009 arraignment, see id., which is corroborated by the criminal docket, see Docket at 2. Because no continuance was granted on June 1, 2009, Davis' argument must fail.

[11] To the extent that these continuances were requested by defense counsel, Davis "may not move for dismissal based on a trial delay caused by his own continuances. . . . [because] [t]he IAD[A] does not restrict the defendant's ability to request continuances himself." United States v. Costello, No. 14-107-1, 2015 WL 4886440, at *4 (E.D. Pa. Aug. 17, 2015); see also New York v. Hill, 528 U.S. 110, 116 (2000) ("To be sure, the 'necessary or reasonable continuance' provision is, by clear implication, the sole means by which the prosecution can obtain an extension of the time limits over the defendant's objection. But the specification in that provision that the 'prisoner or his counsel' must be present suggests that it is directed primarily, if not indeed exclusively, to prosecution requests that have not explicitly been agreed to by the defense.").

U.S. Const. amend. VI. "A defendant's right to counsel is not without limit and cannot be the justification for [the] inordinate delay or manipulation of the appointment system. There is ample precedent for the proposition that the need for an orderly and expeditious trial may require that a defendant proceed with counsel not of his [or her] preference." Fischetti v. Johnson, 384 F.3d 140, 145 (3d Cir. 2004) (internal citations omitted); see also Wheat v. United States, 486 U.S. 153, 158-59 (1988). "[A]lthough it is 'desirable' that a criminal defendant 'obtain private counsel of his [or her] own choice, that goal must be weighed and balanced against an equally desirable public need for the efficient and effective administration of criminal justice.'" Paullet v. Howard, 634 F.2d 117, 119 (3d Cir. 1980) (quoting United States ex rel. Carey v. Rundle, 409 F.2d 1210, 1214 (3d Cir. 1969), cert. denied, 397 U.S. 946 (1970)); see also Fuller v. Diesslin, 868 F.2d 604, 607 (3d Cir.1989); United States v. Romano, 849 F.2d 812, 819 (3d Cir. 1988) ("The right to choose counsel is not unqualified, however, 'and must be balanced against the requirements of the fair and proper administration of justice.'" (quoting United States v. Rankin, 779 F.2d 956, 958 (3d Cir. 1986))).

When Davis initiated the final disposition of the Pennsylvania charges, he elected to retain private counsel of his own choice, Attorney Stein. May 23, 2017 Tr. at 16-18. Attorney Stein, however, did not enter his appearance on Davis' behalf. Id. at 16-18, 107. In his absence, the trial court appointed Attorney Jovanov to represent Davis until such time as Attorney Stein entered his appearance. Id. at 105-08. The appointment of Attorney Jovanov was an appropriate exercise of the trial court's discretion and was effectuated to avoid violating Davis' right to counsel. See Pa. R. Crim. P. 122(A)(3) ("(A) *Counsel shall be appointed*: . . . (3) in all cases, by the court, on its own motion, *when the interests of justice require it*." (emphasis added)). Indeed, had the court not appointed Attorney Jovanov to represent Davis, he would have been

unrepresented at the July 6, 2009, July 20, 2009, July 27, 2009, and August 10, 2009 listings. Moreover, the record contains no evidence that Davis ever objected to Attorney Jovanov's representation.

Even if Attorney Jovanov's representation was somehow improper, Davis cannot demonstrate that he is entitled to habeas relief. The Third Circuit "has held that minor, technical violations of the IAD[A] are not sufficient to require granting habeas relief." Cooney, 886 F.2d at 44 (quoting Casper, 822 F.2d at 1290). "To date, only violations of the anti-shuttling provision . . . have been found by this court to be so 'fundamental' as to warrant habeas relief without a showing of prejudice." Id. (internal citations omitted). Thus, Davis has failed to establish that Attorney Jovanov's appointment and the subsequent continuances constituted "a fundamental defect which inherently result[ed] in a complete miscarriage of justice." Davis v. United States, 417 U.S. 333, 346 (1974) (quoting Hill v. United States, 368 U.S. 424, 429 (1962)). Accordingly, Davis' final claim does not warrant habeas relief.

IV. CONCLUSION

For the foregoing reasons, I recommend that Davis' habeas petition be denied and dismissed.[12] Therefore, I make the following:

RECOMMENDATION

AND NOW, this 29th day of June, 2021, IT IS RESPECTFULLY RECOMMENDED that the petition for a writ of habeas corpus be DENIED and DISMISSED. There has been no substantial showing of the denial of a constitutional right requiring the issuance of a certificate of

[12] In his petition, Davis requests "a hearing to develop the record." Pet. at 14. I recommend that this request be denied. Given that Davis' claims lack merit, a hearing would not benefit either Davis or this Court. See Goldblum v. Klem, 510 F.3d 204, 221 (3d Cir. 2007) (citing Schriro v. Landrigan, 550 U.S. 465, 473 (1993)).

appealability. The Petitioner may file objections to this Report and Recommendation. See Local Civ. Rule 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.

/s/ Marilyn Heffley
MARILYN HEFFLEY
UNITED STATES MAGISTRATE JUDGE

APPENDIX

"C"

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

KEITH DAVIS, Petitioner, v. SUPERINTENDENT – SCI HOUTZDALE, et al., Respondents.	:	CIVIL ACTION NO. 20-2845

ORDER

NITZA I. QUIÑONES ALEJANDRO, J.

AND NOW, this _____day of _____, 2021, upon consideration of the Petitioner's Petition for a Writ of Habeas Corpus (Doc. No. 1), the Respondents' Response thereto (Doc. No. 10), the Petitioner's Reply (Doc. No. 20), and after review of the Report and Recommendation of United States Magistrate Judge Marilyn Heffley (Doc. No. 23), it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. The Petition for a Writ of Habeas Corpus is **DENIED** and **DISMISSED** with prejudice;
3. There is no probable cause to issue a certificate of appealability; and
4. The Clerk of Court shall mark this case **CLOSED**.

BY THE COURT:

_____
NITZA I. QUIÑONES ALEJANDRO, J.

APPENDIX

"D"

CLD-200 July 21, 2022

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 22-1581

KEITH DAVIS,
Appellant

v.

SUPERINTENDENT SCI HOUTZDALE; et al.

(E.D. Pa. Civ. No. 2:20-cv-02845)

Present: AMBRO, SHWARTZ, and BIBAS, Circuit Judges

Submitted is Appellant's application for a certificate of appealability in the above-captioned case.

Respectfully,

Clerk

ORDER

The application for a certificate of appealability is denied because jurists of reason would not debate whether the District Court properly denied Davis's petition pursuant to 28 U.S.C. § 2254. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Jurists of reason would agree without debate that Davis's ineffective-assistance-of-trial-counsel claim is procedurally defaulted. See Coleman v. Thompson, 502 U.S. 722, 750 (1991).

By the Court,

s/ Stephanos Bibas
Circuit Judge

Dated: July 28, 2022
DWB/arr/cc: MW; RE; MS

A True Copy:

Patricia A. Dodszuweit

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

APPENDIX

"F"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1581

KEITH DAVIS,
Appellant

v.

SUPERINTENDENT SCI HOUTZDALE;
THE DISTRICT ATTORNEY OF PHILADELPHIA COUNTY

(E.D. Pa. No. 2:20-cv-02845)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by Appellant in the above-captioned 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/Stephanos Bibas
Circuit Judge

Dated: October 4, 2022

cc: Michael Wiseman Esq.
Ronald Eisenberg, Esq.
Matthew Stiegler, Esq.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0007071-2009
	:	
v.	:	
KEITH DAVIS	:	SUPERIOR COURT

SUPPLEMENTAL OPINION

Byrd, J. June 13, 2018

On March 25, 2010, a jury convicted petitioner Keith Davis on charges of attempted murder, aggravated assault, carrying a firearm on a public street in violation Section 6108 of the Uniform Firearms Act, and possessing an instrument of crime. Petitioner was sentenced to an aggregate term of twenty-five (25) to fifty (50) years of incarceration on May 6, 2010. Although, Daniel Santucci, Esquire, represented him during trial, petitioner had previously been represented by Gerald Stein, Esquire, among others.

On May 7, 2010, Barbara Ann McDermott, Esquire, was appointed appellate counsel and entered her appearance. Although represented by appellate counsel, petitioner filed a *pro se* notice of appeal on May 13, 2010. On August 10, 2010, this court ordered petitioner to file a statement of matters complained of on appeal, pursuant to Pa.R.A.P. 1925(b). On November 5, 2010, appellate counsel filed said statement. This court issued an opinion on November 16, 2010, and the Superior Court affirmed the judgment of sentence on April 21, 2011.

Petitioner filed a *pro se* Post Conviction Relief Act (PCRA) petition on September 16, 2011. On March 5, 2012, Ms. McDermott was permitted to withdraw and J. Matthew Wolfe, Esquire, was appointed as PCRA counsel. On April 9, 2013, PCRA counsel filed the first amended PCRA petition seeking a new trial. On September 27, 2013, PCRA counsel filed a second amended PCRA petition. On June 27, 2014, PCRA counsel filed a third amended PCRA petition. Thereafter, Michael Pileggi, Esquire, was retained as PCRA counsel on May 27, 2015, and filed the fourth amended PCRA petition alleging that trial counsel was ineffective for failure to request that the charges be dismissed with prejudice pursuant to Article IV(e) of the Interstate Agreement on Detainers Act (IADA). On January 18, 2017, Mr. Pillegi filed a supplemental PCRA petition, alleging a violation of "Article IV(e) and/or Article III." Thereafter, this court conducted an evidentiary hearing and heard testimony on April 10, 2017, May 19, 2017, May 23, 2017, and June 6, 2017. The Commonwealth filed a motion to dismiss on October 17, 2017. On October 20, 2017, this court formally dismissed the PCRA petition.

Petitioner filed a *pro se* notice of appeal on November 9, 2017. On November 22, 2017, this court ordered petitioner to file a statement of matters complained of on appeal. Petitioner failed to file a timely statement of matters, and this court issued an opinion pursuant to *Commonwealth v. Lord*, 719 A.2d 306, 309 (Pa. 1998) on January 12, 2018. Subsequently, petitioner filed a *pro se* motion for an extension of time on January 16, 2018, followed by a *pro se* statement of matters complained of on appeal on January 22, 2018.

On February 5, 2018, the Superior Court issued an order remanding the matter "for 30 days for a determination as to whether PCRA counsel," Mr. Pillegi, was permitted to withdraw, "and to take further action as required to protect Appellant's right to appeal." This court issued an order granting Mr. Pillegi's motion to withdraw on February 16, 2018, and David Barrish, Esquire,

entered his appearance as newly appointed PCRA counsel on February 23, 2018. On March 29, 2018, this court ordered petitioner to file a Rule 1925(b) statement of matters complained of on appeal. On March 30, 2018, Mr. Barrish filed a "petition to vacate briefing schedule and to remand to file counseled concise statement of errors complained of on appeal." Mr. Barrish then filed a motion for an extension of time on April 18, 2018. However, on April 23, 2018, the Superior Court remanded the matter to this court and permitted petitioner "to file in the PCRA court" and "serve upon the PCRA judge a Pa.R.A.P. 1925(b) statement of errors complained of on appeal within in 21 days" and ordered this court to "prepare a supplemental opinion." On May 14, 2018, petitioner filed said statement in accordance with the Superior Court order. This opinion follows.

STATEMENT OF FACTS

The following facts are reproduced from the Superior Court's April 21, 2011 opinion:

> On September 7, 2006, at 52nd Street and Lancaster Avenue in Philadelphia, Appellant shot Maurice Ragland twice in the head. The incident occurred following an earlier altercation wherein Appellant accused Ragland of stealing a jar full of change from Appellant's car. On the day in question, Appellant was hiding in a vacant lot and called out to Ragland asking where he was going. Appellant appeared to be hiding something. Ragland responded that he was going to the store and asked Appellant if he needed anything. Appellant did not respond. Ragland heard Appellant come up behind him quickly, so he turned and faced Appellant. Appellant aimed a revolver at Ragland and shot him twice. Ragland was shot in the forehead and through the jaw and neck. When police arrived, Ragland identified Appellant as his shooter. Ragland was taken to the hospital and several days later he again identified Appellant from a photo array. Ragland spent three months in recovery. He had his jaw wired shut, lost nine teeth, and, at the time of trial, continued to have left-sided weakness due to injury to his spine.

Commonwealth v. Davis, 29 A.3d 842 (Pa. Super. 2011).

STATEMENT OF MATTERS

Petitioner raises the following issues in his statement of matters complained of on appeal[1]:

1. The PCRA Court erred when it denied Appellant Keith Davis' Amended Post-Conviction Relief Act Petition, as the Commonwealth failed to bring Mr. Davis to trial within "180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint" in accordance with Article 3 of the Intestate Agreement on Detainer's Act or within "within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance" in accordance with Article 4 of the Interstate Agreement on Detainers Act and trial counsel Daniel Santucci, Esq., was ineffective for failing to file a motion to dismiss all charges in this matter, pursuant to this violation of the Interstate Agreement on Detainers Act (*See* 42 Pa. C.S.A. § 9101, entitled, "Agreement on Detainers").

DISCUSSION

The Post Conviction Relief Act affords collateral relief to those individuals convicted of crimes they did not commit and to those individuals serving illegal sentences. 42 Pa. C.S. §9542. Claims pursuant to the PCRA are extraordinary assertions that the judicial system failed; they are not merely direct appeal claims that are made at a later stage of the judicial proceedings. *Commonwealth v. Rivers*, 786 A.2d 923 (Pa. 2001). A petitioner is entitled to file all PCRA petitions, including second and subsequent petitions within one (1) year from the date his judgment of sentence becomes final. 42 Pa. C.S. §9545(b)(1); 42 Pa. C.S. §9545(b)(3). A petitioner is eligible for relief under the PCRA if he proves by a preponderance of the evidence that his conviction or sentence resulted from one or more of the enumerated circumstances found at 42 Pa.

[1] The following is a verbatim account of petitioner's statement.

C.S. §9543(a)(2) (setting forth the eligibility requirements of the PCRA). *Commonwealth v. Ligons*, 971 A.2d 1125 (Pa. 2009).

A petitioner may be entitled to relief under the PCRA if he is able to plead and prove that a conviction or sentence resulted from ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa. C.S. §9543(a)(2)(ii). It is the ineffectiveness claim, not the underlying error at trial, which is reviewed. *See Commonwealth v. Clayton*, 816 A.2d 217 (Pa. 2002). Under the PCRA, an allegation of ineffective assistance of counsel amounts to constitutional malpractice where counsel's incompetence deprived a defendant of his Sixth Amendment right to counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Commonwealth v. Williams*, 782 A.2d 517 (Pa. 2001).

Petitioner contends that the "PCRA Court erred when it denied Appellant Keith Davis' Amended Post-Conviction Relief Act Petition, as the Commonwealth failed to bring Mr. Davis to trial within '180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint' in accordance with Article 3 of the Intestate Agreement on Detainer's Act[,] or within 'within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance' in accordance with Article 4 of the Interstate Agreement on Detainers Act[,] and trial counsel Daniel Santucci, Esq., was ineffective for failing to file a motion to dismiss all charges in this matter, pursuant to this violation of the Interstate Agreement on Detainers Act (See 42 Pa. C.S.A. § 9101, entitled, 'Agreement on Detainers')."

Our Supreme Court held that the time attributable to the normal progression of a case, which may include continuances filed by the defense, are not delays for purposes of promptly brining a defendant to trial. *Commonwealth v. Mills*, 162 A.3d 323 (Pa. 2017). Indeed, the United States Supreme Court held that defense counsel could waive defendant's right to be brought to trial within one hundred eighty 180 days under the Interstate Agreement Detainers Act (IADA), even in the absence of the defendant's express consent. *New York v. Hill*, 120 U.S. 110 (2000). *See also Commonwealth v. Jones*, 886 A.2d 689, 696-97 (Pa. Super. 2005). "The IAD[A] is an agreement between forty-eight states, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States, that establishes procedures for the transfer of prisoners incarcerated in one jurisdiction to the temporary custody of another jurisdiction which has lodged a detainer against a prisoner." *Jones*, 886 A.2d at 697. In relevant part, Article III of the IADA states:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institutional of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, [t]hat for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

42 Pa. C.S.A. §. 9101, Art. III(a).

***

Article IV states in pertinent part:

> (a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is

incarcerated: Provided That the court having jurisdiction of such indictment, information or complaint shall have dully approved, recorded and transmitted the request...

***

(c) In respect of any proceeding made possible by this article, trial shall be commence within 120 days of arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive and prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

***

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the person's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

42 Pa.C.S.A. § 9101, Article IV.

As stated above, under Article III of the IADA, a defendant must be brought to trial within "180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint." In *Commonwealth v. Williams,* our Supreme Court held that the 180-day time period "in Article III(a) of the [IADA] does not commence until the prisoner's [notice and] request for final disposition of the charges against him ha[ve] actually been delivered to the court and prosecuting officer that lodged the detainer against him." *Commonwealth v. Williams,* 896 A.2d 551 (Pa. 2006) (quoting *Fex v. Michigan,* 507 U.S. 43 (1993)).

Here, petitioner has failed to show when his place of imprisonment notice and request for final disposition of charges were actually received by the District Attorney's Office. By petitioner's own admission, "the record is unclear as to when the Commonwealth received the defendant's request for final disposition." *See* Trial Memorandum of Law, at 7, footnote 2. Neither the February 3, 2009 signed "Place of Imprisonment Form," or the February 4, 2009 letter addressed to the District Attorney, Lynne Abraham, Esquire, seeking "disposition of pending charges" triggered commencement of the Article III run date because petitioner failed to show when those documents were received by the court and the Commonwealth. *See Commonwealth v. Thurston*, 834 A.2d 595, 598-600 (Pa. Super. 2003) (holding that the commencement of the 180-day time period under Article III of the IAD[A] does not begin to run until the defendant has successfully delivered a request to the prosecution [and the court] regarding final disposition); *See also Commonwealth v. Miller*, 3 Pa. D. & C. 5th 449 (Pa. Com. Pl. Jan. 7, 2008).

Petitioner's request for final disposition of charges is deemed to have been received by the Commonwealth on March 4, 2009, when said request accompanied the Form VII "Temporary Custody" document. Thus, neither February 3, 2009 nor February 4, 2009, can serve as the commencement of the 180 day mechanical run date. N.T. 10/20/2017 at 41; Form VII, Prosecutor's Acceptance of Temporary Custody. Rather, the date on which the Commonwealth received the request for final disposition from petitioner was March 4, 2009, resulting in a 180 day mechanical run date of August 31, 2009.

In "determining the duration and expiration of dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." 42 Pa.C.SA. § 9101, Art. VI (a). Indeed, our Supreme Court held that "delay occasioned

by the defendant is excludable" from the IADA deadline date. *See Commonwealth v. Diggs*, 482 A.2d 1329 (Pa. Super. 1984). In light of the fact that March 4, 2009 commenced the 180 day period for purposes of the IADA deadline, the mechanical run date was August 31, 2009. However, the following periods of delay were attributed to the defense and ruled excludable: 1.) On July 6, 2009, a defense request until July 20, 2009 for pretrial conference, which resulted in 14 days excludable time. N.T. 5/23/2017 at 105; *See* Docket Entries; 2.) On July 20, 2009, the day of the pre-trial conference Gerald Stein, Esquire, defense counsel, was unavailable and continued to July 27, 2009, which resulted in 7 days excludable time. *Id.* at 105-106; *See* Docket Entries; 3.) On July 27, 2009, pre-trial conference continued until to August 10, 2009, for Mr. Stein's entry of appearance, which resulted in 14 day excludable time. N.T. 5/23/2017 at 105; *See* Docket Entries. In total, the above listed continuances account for 35 days of excludable time, resulting in an adjusted run date of October 5, 2009. Thereafter, Daniel Santucci, Esquire, entered the case as trial counsel.

On August 31, 2009, the first listing of the case before this court, the Commonwealth requested a trial date prior to the adjusted run date of October 5, 2009. However, Mr. Santucci waived objection to a trial date beyond the adjusted run date. N.T. 8/31/2009 at 3-4. As a result, this court assigned the case the next available trial date of February 24, 2010. *Id.* On February 24, 2010, Mr. Santucci informed this court that he was actively engaged in an unrelated trial matter. N.T. 2/24/2010 at 2-3. On that same day, the Commonwealth informed this court that petitioner's case was governed by the IADA and requested the earliest possible trial date, which was March 22, 2010. *Id.* On March 22, 2010, this court informed the parties that no jury panels were available:

> **The Court:** [B]ecause of our system of jury selection is Tuesday, tomorrow. So I intended the trial to start today, but no panel is available. So I'm rolling this over for tomorrow for jury selection. Mr. Santucci, you have any objection to that?
> **Mr. Santucci:** No, Your Honor.

N.T. 3/22/2010 at 3. Indeed, the trial started on March 23, 2010.

Here, the "reasonable continuances" stemming from the unavailability of defense counsel and the lack of a jury panel, surely constituted "good cause shown" for purpose of the IADA. Thus, the IADA Article III timeliness requirement was not violated.

Alternatively, petitioner contends that the "PCRA Court erred when it denied Appellant Keith Davis' Amended Post-Conviction Relief Act Petition, as the Commonwealth failed to bring Mr. Davis to trial…'within 120 days of the arrival of the prisoner in the receiving state.'" Article IV of the IADA is not implicated in this case and does not apply. In order to be brought within the purview of Article IV, the Commonwealth must have presented a "written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated." 42 Pa.C.S.A. § 9101(a), Art. IV. Here, no such Commonwealth request was presented and this trial was initiated by petitioner under Article III when he gave notice of his place of imprisonment and requested final disposition of all pending charges against him. At the conclusion of the evidentiary hearing and following oral argument, this court issued the following ruling:

> **The Court:** Keith Davis contends that he is entitled to Post Conviction Relief Act relief because his trial attorney was ineffective for failure to file a motion to dismiss charges in this Commonwealth against him in light of the Commonwealth's violation of the Interstate Agreement on Detainers Act.
>
> Specifically, he contends that Article 3 of the Act was violated when he was not brought to trial within 180 days. He contends in the alternative that Article 4 of the Act was violated because the Commonwealth did not bring him to trial within 120 days[.]
>
> This Court conducted an evidentiary hearing over the period 5/19/17, 5/23/17 and 6/6/17 on which days both sides presented evidence. In addition,

there were memoranda presented to this Court by counsel and I have just had the benefit of oral argument. The record supports the Commonwealth's position that this is properly governed by Article 3 of the act; that is defendant initiated transfer from Federal custody in order to resolve the charges against him.

Further, the record reflects that although the aforementioned request was made by the prison by letter dated 2/4/09, the prosecutor and the Court did not accept custody and there is no record of the defendant's request being received by the Commonwealth until 3/4/2009, thus triggering 180 days under the Act. It should be noted that the defense has not established when statutory notice was received by the Commonwealth. Thereafter, the various continuances which are articulated on the record from the evidentiary hearings were attributed to the defense and at pertinent times and on the record good cause showing was made in accordance with the Act.

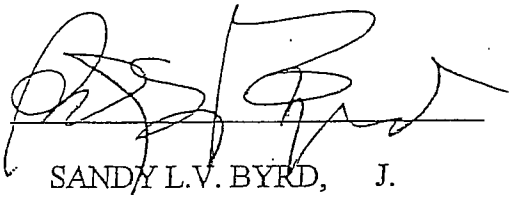
In light of the foregoing, trial was conducted within 180 days, the period after which the mechanical run date was adjusted to reflect the aforementioned continuance. This Court having been – this case having been brought pursuant to Article 3 of the Act, the Article 4 claims need not be addressed.

N.T. 10/20/2017 at 39-42.

In light of the foregoing, trial counsel was not ineffective for failure to file a frivolous motion to dismiss charges against petitioner, nor did this court commit error by dismissing the instant meritless PCRA petition.

Accordingly, for the foregoing reasons, the dismissal of petitioner's PCRA petition should be AFFIRMED.

BY THE COURT:



SANDY L.V. BYRD, J.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. KEITH DAVIS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3725 EDA 2017

Appeal from the PCRA Order entered October 20, 2017
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-51-CR-0007071-2009

BEFORE: OLSON, J., STABILE, J., and STRASSBURGER, J.*

MEMORANDUM BY STABILE, J.: **FILED SEPTEMBER 26, 2019**

Appellant, Keith Davis, appeals from the October 20, 2017 order entered in the Court of Common Pleas of Philadelphia County denying his petition for collateral relief filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. The PCRA court rejected Appellant's assertions of trial counsel ineffectiveness relating to violations of the Interstate Agreement for Detainers Act ("IADA"), 42 Pa.C.S.A. § 9101.[1] Finding no error in the PCRA court's ruling, we affirm.

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* Retired Senior Judge assigned to the Superior Court.

[1] As our Supreme Court has explained,

> The IAD is an agreement between 48 states, the District of Columbia, Puerto Rico, and the Virgin Islands that establishes

In March 2010, a jury found Appellant guilty of attempted murder, aggravated assault, and other charges (collectively, "state charges") stemming from a September 2006 shooting in Philadelphia. The trial court sentenced Appellant to an aggregate term of 25 to 50 years in prison. For reasons not important to this appeal, as of early 2009, prior to Appellant's trial in Philadelphia County, Appellant was a federal prisoner housed at FCI-Cumberland, in Cumberland, Maryland. In February 2009, he requested disposition of the pending state charges against him in Pennsylvania pursuant to Article III of the IADA. On or about April 2, 2009, he was transported by

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> procedures for the transfer of prisoners incarcerated in one jurisdiction to the temporary custody of another jurisdiction which has lodged a detainer against them. Unlike a request for extradition, which is a request that the state in which the prisoner is incarcerated transfer custody to the requesting state, a detainer is merely a means of informing the custodial jurisdiction that there are outstanding charges pending in another jurisdiction and a request to hold the prisoner for the requesting state or notify the requesting state of the prisoner's imminent release.
>
> Article IV of the IAD provides the procedure by which the prosecutor in the requesting state initiates the transfer[.]

Commonwealth v. Williams, 896 A.2d 523, 536 n.5 (Pa. 2006). Whereas Article IV provides the procedure for a transfer initiated by the prosecutor in the requesting or "receiving" state, Article III provides the procedure for a transfer initiated by the defendant while incarcerated in the "sending" state. In the instant case, Appellant initiated the process. As such, Article III applies to his case.

two Pennsylvania transport officers to Philadelphia County and was processed on the state charges.

According to testimony presented at an evidentiary PCRA hearing on May 19, 2017, the transport officers prepared to return Appellant to FCI-Cumberland following Appellant's April 2009 arraignment in Philadelphia County. As the Commonwealth explains, and as is borne out by testimony from Appellant's evidentiary hearings,

> [w]hile they were in transit [from Philadelphia to Maryland], Ellen Roberts—an examiner in FCI Cumberland's records office—received a phone call informing her that [Appellant] should not be accepted back into federal custody. When [Appellant] arrived with detectives at the receiving and discharge wing of FCI Cumberland shortly after noon, Roberts informed them that [Appellant] needed to be taken back to Philadelphia, and advised them to contact their office (N.T. 5/19/2017, 29-33).
>
> While the detectives sorted out [Appellant's] status, FCI Cumberland placed him in a holding cell in the receiving and discharge wing for approximately thirty-six minutes. [Appellant] was never searched, screened for safety concerns, screened for medical purposes, photographed, or had his fingerprint taken—all of which would have been required if he were readmitted to FCI Cumberland's general population. Instead, a Philadelphia detective stayed with [Appellant] during the thirty-six minutes he waited before they transported him back to Philadelphia (N.T. 5/19/2017, 43-56, 60; 5/23/2017, 109-11).

Commonwealth Brief at 3.

As stated previously, Appellant proceeded to trial on the state charges in Philadelphia and, following a guilty verdict, was sentenced in March 2010 to an aggregate term of 25 to 50 years in prison. On direct appeal to this Court, Appellant's counsel filed an ***Anders*** brief presenting one potential issue

for this Court's review: "whether the evidence was sufficient to establish the elements of the crimes." ***Commonwealth v. Davis***, 1299 EDA 2010, unpublished memorandum at 3 (Pa. Super. filed April 21, 2011) (quoting Appellant's ***Anders*** Brief at 7). This Court granted counsel's application to withdraw and affirmed Appellant's judgment of sentence. Our Supreme Court denied his petition for allowance of appeal.

Appellant filed a timely PCRA petition on September 16, 2011. Counsel was subsequently permitted to withdraw and new counsel filed amended petitions, concluding with a fourth amended petition filed on January 18, 2017. In that iteration, Appellant asserted he was transported from FCI-Cumberland to Philadelphia where he was arraigned on the state charges on April 2, 2009; he "was returned to FCI Cumberland as the county prison system was unwilling to house him;" and "[a]fter being returned to federal custody and being signed in at FCI Cumberland, the warrant officers returned to the federal facility, having arranged for [Appellant] to be housed . . . in Philadelphia and transported him back to Philadelphia[.]" Fourth Amended PCRA Petition, 1/18/17, at ¶ 8 (a)-(e). Appellant contended his trial counsel was ineffective for "failing to request that the charges in this matter be dismissed with prejudice pursuant to Article IV(e) and/or Article III [of the IADA]." ***Id.*** at

¶ 8(g).[2] Appellant requested an evidentiary hearing to "establish the timeline relating to [Appellant's] removal from the FCI Cumberland, his incarceration

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[2] For purposes of this appeal, the relevant provision of Article III and Article IV(e) provide as follows:

> **Article III -** (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, **he shall be brought to trial within 180 days** after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
>
> (d) . . . If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.
>
> **Article IV -** (e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

and arraignment in Philadelphia, his return to FCI Cumberland and his return to Philadelphia." ***Id.*** at ¶ 9(a).

In response to Appellant's fourth amended petition, the PCRA court held a series of evidentiary hearings, which produced, *inter alia*, the testimony summarized above in the Commonwealth's brief regarding Appellant's travels in relation to the IAD Article III process initiated at Appellant's request. The Commonwealth subsequently filed a motion to dismiss the petition. Following oral argument and submission of briefs, the PCRA court entered an order on October 20, 2017, dismissing the petition. This timely appeal followed.[3] Both Appellant and the PCRA court complied with Pa.R.A.P. 1925.

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42 Pa.C.S.A. §9101, Art. III(a) (emphasis added), (d) and Art. IV(e). Also pertinent are Article V(h) and Article VI(a), which provide in relevant part as follows:

> **Article V** - (h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory **and custody** of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being held shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner.
>
> **Article VI** - (a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

42 Pa.C.S.A. § 9101, Art. V(h) (emphasis added), Art. VI(a).

[3] Appellant filed this appeal *pro* se. The PCRA court subsequently granted PCRA counsel's request to withdraw. The court then appointed David W.

Although Appellant filed a *pro se* Rule 1925(b) statement, we remanded for the filing of a counseled Rule 1925(b) statement upon request of appellate counsel. We further directed the PCRA court to file a supplemental Rule 1925(a) opinion. Order, 4/23/18, at 1. Following remand, Appellant filed a Rule 1925(b) statement alleging the following errors complained of on appeal:

> The PCRA Court erred when it denied Appellant Keith Davis' Amended Post-Conviction Relief Act Petition, as the Commonwealth failed to bring Mr. Davis to trial within "180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint" in accordance with Article 3 of the Interstate Agreement on Detainers Act or "within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance" in accordance with Article 4 of the Interstate Agreement on Detainers Act and trial counsel Daniel Santucci, Esq., was ineffective for failing to file a Motion to Dismiss all charges in this matter, pursuant to this violation of the Interstate Agreement on Detainers Act. (*See* 42 Pa.C.S.A. § 9101, entitled, "Agreement on Detainers").

Barrish, Esquire, to represent Appellant. Attorney Barrish entered his appearance on February 23, 2018 and filed a Rule 1925(b) statement on Appellant's behalf on May 14, 2018. Attorney Barrish has filed a petition to withdraw with this Court, noting that Appellant is "presently represented by Aaron Bell, Esq., who is [Appellant's] counsel of choice (as he was privately retained)." Petition to Withdraw, 7/18/19, at ¶ 3. As Attorney Barrish indicates, Attorney Bell entered his appearance with this Court on December 19, 2018 and filed a brief as well as a reply brief on Appellant's behalf. ***Id.*** at ¶ 2. In light of the circumstances, including the lack of any opposition on the part of Appellant, we grant Attorney Barrish's petition to withdraw.

Appellant's Rule 1925(b) Statement, 5/14/18, at 1-2. As reflected in the Rule 1925(b) statement, Appellant's claim of error relates to the number of days that elapsed before Appellant was brought to trial on his state charges and asserts trial counsel ineffectiveness for failing to seek dismissal of the state charges based on the violation of the IADA's time requirements. The PCRA court addressed that contention in its Rule 1925(a) Supplemental Opinion filed on June 13, 2018.

In its opinion, the PCRA court explained that the provisions of Article III of the IADA apply to this case because Appellant sought disposition of the matters pending in Pennsylvania. The court determined that Article III(a)'s 180-day period began on March 4, 2009, the date on which the Commonwealth received the request for final disposition from Appellant. Therefore, the mechanical run date was August 31, 2009. Supplemental Opinion, 6/13/18, at 8. Further, Article VI(a) provides that the running of the time period in Article III "shall be tolled as long as the prisoner is unable to stand trial, **as determined by the court having jurisdiction of the matter.**" ***Id.*** (quoting 42 Pa.C.S.A. § 9101, Art. VI(a) (emphasis added). Moreover, as the PCRA court recognized, our Supreme Court has determined that "delay occasioned by the defendant is excludable[.]" ***Commonwealth v. Montione***, 720 A.2d 738, 741 (Pa. 1998).

The PCRA court reviewed the various "'reasonable continuances' stemming from the unavailability of defense counsel and the lack of the jury

panel," and determined they "constituted 'good cause shown' for purpose[s] of the IADA." Supplemental Opinion, 6/13/18, at 8-10. Therefore, even though the trial did not begin until March 23, 2010, the timeliness requirement of Article III was not violated. ***Id.*** at 10. "In light of the foregoing, trial counsel was not ineffective for failure to file a frivolous motion to dismiss charges against [Appellant], nor did this court commit error by dismissing the instant meritless PCRA petition." ***Id.*** at 11.

Although Appellant's Rule 1925(b) statement preserved only the issue of timeliness with respect to bringing Appellant to trial on the state charges, Appellant is now asking us to consider two issues in this appeal as follows:

> I. Was trial counsel ineffective for failing to file a motion to dismiss when [Appellant] was not brought to trial within 180 days, as required by Article III of the [IAD], prior to being returned to his original place of confinement?
>
> II. According to Article III of the Interstate Agreement on Detainers, is the trial court's judgment of sentence illegal because the charges against [Appellant] are void and without legal "force of effect" based upon the Commonwealth's return of him to his original place of confinement prior to trial?

Appellant's Brief at 2. Appellant indicates that the first of his issues was preserved in his Rule 1925(b) statement while acknowledging he is raising the second issue for the first time in this appeal, contending it involves legality of sentence, which cannot be waived. ***Id.*** at 2, 14 n.3.

On its face, Appellant's first issue may not appear to represent a drastic departure from the issue preserved in his Rule 1925(b) statement. However,

a review of Appellant's argument proves otherwise. In his brief, Appellant focuses on the failure to bring Appellant to trial "within 180 days **prior to being returned to FCI-Cumberland.**" Appellant's Brief at 8 (emphasis added). Specifically, Appellant argues that he was returned to FCI-Cumberland in April 2009 when the transporters mistakenly embarked on a return trip to FCI-Cumberland, only to be told upon arrival that they were to take Appellant back to Pennsylvania. He asserts that the provisions of Article III(d) require that the trial court enter an order dismissing the state charges. Therefore, "[t]he Commonwealth forfeited its ability to prosecute [Appellant] when it returned him to FCI-Cumberland without first bring[ing] him to trial within 180 days." ***Id.*** at 9 (citing 42 Pa.C.S.A. § 9101, Art. III(a)(d)).

It is well settled that an issue not preserved in an appellant's Rule 1925(b) statement is waived for appeal. ***See, e.g., Commonwealth v. Castillo***, 888 A.2d 775, 780 (Pa. 2005) (reaffirming the bright-line rule first enunciated in ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998), that "issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived."). Because Appellant did not preserve any issue relating to his "return to FCI-Cumberland," the issue is waived.[4]

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[4] Even if not waived, Appellant's argument would fail. The record supports the conclusion that Appellant was not "returned" to Maryland. Rather, as reflected above, he remained under the supervision of the Pennsylvania detectives who transported him and was never processed back into FCI-Cumberland. ***See, e.g., Commonwealth v. Merlo***, 364 A.2d 391 (Pa. Super.

With regard to the issue preserved in Appellant's 1925(b) statement, *i.e.*, whether the PCRA court erred in failing to find trial counsel ineffective with respect to the 180-day requirement of Article III(a), we note that our standard of review from the denial of PCRA relief is well settled. "[A]n appellate court reviews the PCRA court's findings of fact to determine whether they are supported by the record, and reviews its conclusions of law to determine whether they are free from legal error." ***Commonwealth v. Spotz***, 84 A.3d 294, 311 (Pa. 2014) (citation omitted). With regard to the scope of our review, we are "limited to the findings of the PCRA court and the

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1976). In ***Merlo***—although in the context of Article IV(e), this Court explained that "[r]egardless of the time limitation in Article IV(c), Article IV(e) requires that a prisoner **not be returned to the custody of the sending state untried**; if he is the indictments, informations, or complaints must be dismissed with prejudice." ***Id.*** at 396 (emphasis added). Here, Appellant was not "returned" to Maryland before trial. Moreover, Appellant's situation is not analogous to that addressed in ***Alabama v. Bozeman***, 533 U.S. 146 (2001), another Article IV case. As the United States Supreme Court explained, the IADA "basically (1) gives a prisoner the right to demand a trial within 180 days [under Art. III]; and (2) gives a State the right to obtain a prisoner for purposes of trial, in which case the State (a) must try the prisoner within 120 days of his arrival, and (b) must not return the prisoner to his 'original place of imprisonment' prior to that trial [under Art IV]." ***Id.*** at 151. Bozeman was returned to a Florida federal prison after being arraigned on state charges in Alabama, obtaining counsel, and spending one night in an Alabama prison. Clearly, Bozeman was returned to his "original place of imprisonment" prior to the trial in state court. By contrast, Appellant was not returned to his "original place of imprisonment" in FCI-Cumberland. Rather, for a thirty-six minute period, he was detained in the receiving and discharge wing at the facility while remaining under the supervision of Pennsylvania authorities. No steps were taken that would have been necessary for him to be received back into that facility.

evidence of record, viewed in the light most favorable to the prevailing party at the trial level." ***Id.***

Again, Appellant contends the PCRA court erred by failing to find trial counsel ineffective for failing to seek dismissal of the state charges because "the Commonwealth did not timely dispose of his charges within the 180 days prior to returning him to his original place of confinement." Appellant's Brief at 7. However, as the PCRA court explained, Appellant was brought to trial in accordance with Article III(a)'s time requirements. More importantly, Appellant did not even address the timeliness argument in his brief, focusing instead on the ramifications of the "return" to FCI-Cumberland, an issue that he waived for failure to preserve it in his Rule 1925(b) statement. Because he has not developed an argument regarding timeliness in his brief, he has abandoned the issue. ***Commonwealth v. Bullock***, 948 A.2d 818, 823 (Pa. Super. 2008). Therefore, Appellant is not entitled to relief on his first issue.

Appellant also asks us to consider his second issue, which he frames as a "legality of sentence" issue. He argues that, in light of Article III of the IADA, the trial court's judgment of sentence was illegal because the Commonwealth returned Appellant to FCI-Cumberland prior to his trial on state charges. By doing so, he contends, "[t]he Commonwealth deprived itself of all statutory authority to bring [Appellant] to trial and impose any judgment of sentence on the pending charges." Appellant's Brief at 16. While we are cognizant that a challenge to the legality of a sentence cannot be waived and

need not be preserved in order to raise it on appeal, we agree with the Commonwealth that Appellant's issue is not raising a legality of sentence issue or an issue that is even cognizable under the PCRA.

As the Commonwealth asserts, a claim is cognizable under the PCRA if "(1) [the petitioner] has been convicted of a crime under the laws of this Commonwealth; (2) he is serving a sentence of imprisonment, probation or parole for the crime; and (3) his conviction resulted from one of seven enumerated errors set forth in 42 Pa.C.S.A. § 9543(a)(2)[.]" Commonwealth Brief at 9 (quoting ***Commonwealth v. Descardes***, 136 A.3d 493, 499 Pa. 2016)). Those seven errors are:

> (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
>
> (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
>
> (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
>
> (iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
>
> (v) Deleted.
>
> (vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

> (vii) The imposition of a sentence greater than the lawful maximum.
>
> (viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S.A. § 9543(a)(2). In his brief, Appellant does not suggest that his conviction or sentence resulted from any of the listed errors. Clearly, subsections (i) through (vii) are inapplicable. To the extent Appellant might suggest the trial court lacked jurisdiction to try or to sentence him, Appellant cannot succeed. This Court has previously ruled that Article IV(e) of the IADA "is not a jurisdictional provision, but a personal statutory right. As such, it is waivable." ***Commonwealth v. Mallon***, 421 A.2d 234, 238 (Pa. Super. 1980) (citations omitted). Article III(d), which substantially parallels Article IV(e), provides:

> (d) . . . If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

42 Pa.C.S.A. § 9101, Art. III(d).[5] Just as Article IV(e) is not a jurisdictional provision, Article III(e) is not a jurisdictional provision. Therefore, Appellant's

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[5] The wording of Article IV(e) addressed by this Court in ***Mallon*** differs slightly, as the highlighted language illustrates:

> **Article IV -** (e) If trial is not had on any indictment, information or complaint contemplated hereby **prior to the prisoner's being returned to the original place of imprisonment pursuant to**

issue does not fall under Section 9543(a)(2)(viii) and there is no other cognizable basis available. Moreover, as the PCRA court explained in its supplemental opinion, Appellant was brought to trial within the required 180-day time period when the continuances and delays occasioned by Appellant were calculated. ***See*** Supplemental Opinion, 6/13/18, at 8-10. Therefore, there was no basis for triggering the dismissal of charges under Article III(d) and Appellant would not be entitled to any relief, even if his "legality of sentence" issue were cognizable under the PCRA.

We find the PCRA court's findings of fact are supported by the record and we discern no error of law in its denial of Appellant's petition. Therefore, we shall not disturb the court's ruling.

Petition to withdraw of David W. Barrish, Esq., granted. Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/26/19

Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

42 Pa.C.S.A. § 9101, Art. IV(e) (emphasis added).

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1581

Davis v. Superintendent Houtzdale SCI

To: Clerk

1) Motion by Appellant for Service of Order

The foregoing motion is granted. The Clerk will provide a copy of the Court's Order dated October 4, 2022 to Appellant directly in this instance only.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: June 15, 2023
ARR/cc:
Mr. Keith Davis
Michael Wiseman, Esq.
Ronald Eisenberg, Esq.
Matthew Stiegler, Esq.

EXHIBITS

EXHIBIT

"A"

INMATE SKILLS DEVELOPMENT PLAN

PROGRAM REVIEW: 07-05-2010

Name: DAVIS, KEITH

RegNo: 14486-067

MOVEMENT DATA

Facility	Assignment	Description	Start Date	Stop Date
CUM	A-DES	DESIGNATED, AT ASSIGNED FACIL	06-07-2010	CURRENT

History

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
CUM	A-DES	DESIGNATED, AT ASSIGNED FACIL	06-07-2010 1309	CURRENT
CUM	IAD	INTERSTATE AGRMNT ON DETAINERS	04-06-2009 1306	06-07-2010 1309
CUM	A-DES	DESIGNATED, AT ASSIGNED FACIL	04-06-2009 1233	04-06-2009 1306
CUM	IAD	INTERSTATE AGRMNT ON DETAINERS	04-02-2009 1232	04-06-2009 1233
CUM	A-DES	DESIGNATED, AT ASSIGNED FACIL	10-06-2008 1809	04-02-2009 1232

CASE MANAGEMENT ASSIGNMENTS

Facility	Assignment	Description	Start Date	Stop Date
CUM	PROG RPT	NEXT PROGRESS REPORT DUE DATE	10-06-2011	CURRENT
CUM	V94 PV	V94 PAST VIOLENCE	07-05-2010	CURRENT
CUM	RPP PART	RELEASE PREP PGM PARTICIPATES	06-11-2010	CURRENT
CUM	V94 CDA913	V94 CURR DRG TRAF ON/AFT 91394	10-28-2008	CURRENT

MEDICAL DUTY STATUS ASSIGNMENTS

Facility	Assignment	Description	Start Date	Stop Date
CUM	YES F/S	CLEARED FOR FOOD SERVICE	08-06-2008	CURRENT
CUM	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	08-06-2008	CURRENT

EXHIBIT

"B"

INMATE SKILLS DEVELOPMENT PLAN

PROGRAM REVIEW: 07-05-2010

Name: DAVIS, KEITH

RegNo: 14486-067

Scranton, PA 18503
Phone/Fax: 570-207-5840 / 570-207-5880

Subject to 18 U.S.C. 4042(B) Notification: Y
- Past conviction for a crime of violence (state and federal)
- Conviction for a drug trafficking crime (federal)

DNA Required: *Y - [Date]*
Subject to Sex Offender Notifications: *[Y,N,N/A]*
Treaty Transfer Case: *[Y,N]*

Profile Comments;

EDUCATION DATA

Facility	Assignment	Description	Start Date	Stop Date
CUM	GED EN	ENROLL GED NON-PROMOTABLE	10-15-2008	CURRENT
CUM	ESL HAS	ENGLISH PROFICIENT	10-15-2008	CURRENT

History

EDUCATION INFORMATION

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
CUM	ESL HAS	ENGLISH PROFICIENT	10-15-2008 1352	CURRENT
CUM	GED EN	ENROLL GED NON-PROMOTABLE	10-15-2008 1419	CURRENT

EDUCATION COURSES

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
CUM	MRSA CLASS	06-23-2010	06-23-2010	P	C	P	1
CUM DRG	BEGINNER GED 12:30-2:30	03-30-2009	04-06-2009	P	W	I	99
CUM DRG	BEGINNER GED 9:30-11:30	03-10-2006	03-30-2009	C	W	I	0
CUM	GED/M 1230	02-20-2009	03-09-2009	C	W	I	0
CUM	GED/W 1430	12-12-2008	02-20-2009	C	W	I	0
CUM	MRSA CLASS	11-12-2008	11-12-2008	P	C	P	1

WORK DATA

Facility	Assignment	Description	Start Date	Stop Date
CUM	F FS AO	FOOD SVC A AND O	06-28-2010	CURRENT

History

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
CUM	F UNASSIGN	UNASSIGNED INMATES	06-23-2010 1450	CURRENT
CUM	F A&O	FCI A&O INMATES	06-07-2010 1309	06-23-2010 1450
CUM	F FS LP AM	FOOD SVC LABOR POOL AM	04-06-2009 1233	04-06-2009 1306
CUM	F FS LP AM	FOOD SVC LABOR POOL AM	12-20-2008 0001	04-02-2009 1232
CUM	F DINRM AM	FCI DINING ROOM AM	12-09-2008 0001	12-20-2008 0001
CUM	F RELG IDL	RELIG. SVCS. WORK PROSCRIPTION	12-08-2008 0001	12-09-2008 0001
CUM	F DINRM AM	FCI DINING ROOM AM	11-29-2008 0001	12-08-2008 0001
CUM	F IDLE	FCI IDLE	11-21-2008 1331	11-29-2008 0001
CUM	F DINRM AM	FCI DINING ROOM AM	11-18-2008 0001	11-21-2008 1331
CUM	F IDLE	FCI IDLE	11-17-2008 1220	11-18-2008 0001
CUM	F DINRM AM	FCI DINING ROOM AM	11-01-2008 0001	11-17-2008 1220
CUM	F FS AO	FOOD SVC A AND O	10-27-2008 0001	11-01-2008 0001
CUM	F UNASSIGN	UNASSIGNED INMATES	10-24-2008 0920	10-27-2008 0001
CUM	F FS AO	FOOD SVC A AND O	10-24-2008 0914	10-24-2008 0920
CUM	F UNASSIGN	UNASSIGNED INMATES	10-23-2008 1203	10-24-2008 0914
CUM	F A&O	FCI A&O INMATES	10-06-2008 1809	10-23-2008 1203

DISCIPLINE DATA

History

06-25-2010 2031655 307 REFUSING TO OBEY AN ORDER LP COMM