

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

FILED NOV 13 2009

KURT JONES : CIVIL ACTION  
V. :  
FRANKLIN TENNIS, et al. : NO. 09-760

ORDER

AND NOW, this 13 day of Nov, 2009, after *de novo* review per Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1), and E.D. Pa. Local Rule 72.1(IV)(b):

1. Petitioner's Objections to the Magistrate Judge's Report and Recommendation are overruled.
2. The Report and Recommendation is approved and adopted, except for:
  - a. Footnote 6 on page 5, as there is no question regarding timeliness, and footnote 4 on the same page, since the habeas petition was filed by counsel, while the mailbox rule only applies to *pro se* habeas petitions;
  - b. Pages 5-7, since there is no question regarding exhaustion; and
  - c. Pages 8-9 discussing and citing *Williams v. Taylor*, 529 U.S. 362, 389 (2000). **This is error.** The Magistrate cites not the *Williams* majority, but the dissent. The current habeas standard of review is stated in *Williams*, 529 U.S. at 402-413 (opinion of Justice O'Connor as to part II).
3. The petition for a writ of habeas corpus is denied.
4. A certificate of appealability is denied, as petitioner has not made a sub

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stantial showing of the denial of a constitutional right, as per 28 U.S.C. § 2253.

*S. The order of Nov 12 is vacated*

BY THE COURT:

A handwritten signature in black ink, appearing to read "Berle M. Schiller". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

BERLE M. SCHILLER, J.