

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

NATHANIEL BUTLER	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN E. WETZEL, et al.	:	NO. 13-3265

ORDER

AND NOW, this 6th day of February 2014, upon consideration of petitioner Nathaniel Butler’s pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry # 1), our July 29, 2013 Order referring this matter to the Honorable David R. Strawbridge for a report and recommendation (docket entry # 5), defendants’ response (docket entry # 9), and Judge Strawbridge’s report and recommendation (“R&R”) (docket entry # 10) to which neither party has filed an objection within the period specified by Loc. R. Civ. P. 72.1 IV (b), and the Court agreeing with Judge Strawbridge that (1) Butler does not fall within the potential ambit of Miller v. Alabama, 132 S.Ct. 2455 (2012) because he was over 19 years old when he committed the crime for which he was convicted and (2) his meritless petition should not be stayed pending the exhaustion of his Miller claim in state court, and the Court finding that:

(a) Local Appellate Rule 22.2 of the Rules of the United States Court of Appeals for the Third Circuit provides that “at the time a final order denying a habeas petition . . . is issued, the district court judge will make a determination as to whether a certificate of appealability should issue”;

(b) Such a certificate should issue only if the petitioner demonstrates that “reasonable jurists could debate” whether the petition states a valid claim for the denial of a constitutional right, Slack v. McDaniel, 529 U.S. 473, 484 (2000); and

(c) We do not believe that reasonable jurists could debate that Miller applies only to juveniles and is therefore inapplicable to Butler's claims;

It is hereby ORDERED that:

1. Judge Strawbridge's report and recommendation (docket entry # 10) is APPROVED and ADOPTED;
2. Butler's petition for a writ of habeas corpus is DENIED;
3. For the reasons summarized above, we DECLINE to issue a certificate of appealability; and
4. The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.