

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

LYDELL SWINSON : **CIVIL ACTION**
: :
v. : :
: :
KERESTES, THE DISTRICT ATTORNEY :
OF THE COUNTY OF PHILADELPHIA :
and THE ATTORNEY GENERAL OF THE :
STATE OF PENNSYLVANIA : **NO. 14-7028**

ORDER

NOW, this 3rd day of March, 2021, upon consideration of the Petition for Writ of *Habeas Corpus* (Doc. No. 1), the response to the petition, the Report and Recommendation filed by United States Magistrate Judge David R. Strawbridge (Document No. 37), and the petitioner’s objections to the Report and Recommendation, and after a thorough and independent review of the record, it is **ORDERED** that:

1. The petitioner’s objections are **OVERRULED**;
2. The Report and Recommendation of Magistrate Judge David R. Strawbridge is **APPROVED** and **ADOPTED**;¹
3. The Petition for Writ of *Habeas Corpus* is **DISMISSED**; and,
4. There is no probable cause to issue a certificate of appealability.

/s/ TIMOTHY J. SAVAGE J.

¹ Petitioner insists that his pending *habeas* petition is not a second or successive petition. A closer examination of the record reveals that he is correct.

When we transferred his petition to the Third Circuit, there had been confusion arising from his having filed an earlier petition challenging two separate conditions for two unrelated homicides. The confusion having been clarified, we recognize that the petition was not a second or successive one. Transferring this petition to the Third Circuit Court of Appeals for authorization to file it as a second or successive petition was improvident.

After a thorough review of the record, we agree with Magistrate Judge Strawbridge’s findings and conclusions in his thorough and well-reasoned report. We conclude that the petition is barred by the AEDPA statute of limitations and its untimeliness is not excused by statutory or equitable tolling.