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

JOMAR HOLDEN,	:	**CIVIL ACTION**
Petitioner,	:	
	:	
v.	:	
	:	
JOHN WETZEL,	:	
***et al.*,**	:	
Respondents.	:	**No. 15-5421**

O R D E R

AND NOW, this 16th day of September, 2016, upon consideration of Magistrate Judge Carol Sandra Moore Wells's Report and Recommendations (Docket No. 13) and Petitioner's Objections to the Report and Recommendations (Docket No. 18), it is hereby **ORDERED** that:

1. To the extent that Mr. Holden claims that he did not have the opportunity to address the affirmative defense of procedural default, his Objections (Docket No. 18) are **GRANTED**.[1] Mr. Holden's remaining objections are **DENIED**.[2]

[1] The Report and Recommendations in this matter reject two of Mr. Holden's claims as procedurally defaulted. Procedural default is an affirmative defense that was raised by the Respondents in their opposition to Mr. Holden's petition. The Report and Recommendation issued in this matter was filed only 8 days after the Respondents' opposition was filed, however, which gave Mr. Holden little opportunity to respond to this defense, especially considering the vagaries of prison mail. Thus, the Court will give Mr. Holden an opportunity to substantively address the procedural default issue and will ask Magistrate Judge Wells to incorporate his arguments into her consideration of the issue. Nothing in this Order should be read as taking any position on the merits of Mr. Holden's potential cause and prejudice arguments.

[2] One of Mr. Holden's claims was considered on the merits – Mr. Holden's sufficiency of the evidence claim. Mr. Holden objects to Magistrate Judge Wells's Report and Recommendations, arguing that the state court considered the wrong standard in deciding his claim, contending that they looked at the evidence from the position of the trial court judge, rather than from the position of "any rational trier of fact." As Magistrate Judge Wells clearly explains, however, the state court did not apply the incorrect standard, and a careful consideration of the evidence reveals that there was more than sufficient evidence to support the verdict.

2. The Report and Recommendations (Docket No. 13) are **APPROVED and ADOPTED in part** and **DENIED without prejudice in part**, to the extent that they discuss the issue of procedural default **only**.
3. This case is referred to the Honorable Carole Sandra Moore Wells, with instructions to give Mr. Holden an opportunity to respond to the Respondents' procedural default arguments **only** and to file a Report and Recommendations that considers those arguments.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE