BROOKS v. GILMORE et al Doc. 20

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

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| **BASIL BROOKS,** | : | |
| **Petitioner,** | : | |
| **v.** | : | |
| **ROBERT GILMORE,** | : | **CIVIL ACTION** |
| **Superintendent, SCI-Greene, and** | : | **No. 15-5659** |
| **PENNSYLVANIA DEPARTMENT OF** | : | |
| **CORRECTIONS,** | : | |
| **Respondents.** | : | |

**MCHUGH, J.** **AUGUST 11, 2017**

**ORDER**

This 11th day of August, 2017, upon careful and independent consideration of the Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254, and after review of the Report and Recommendation of the Magistrate Judge, it is hereby **ORDERED** that:

1. The Report and Recommendation is **ADOPTED** as to all claims except the claim of ineffectiveness for failure to object to the trial court's reasonable doubt instruction.
2. The Petition for Writ of Habeas Corpus is **GRANTED** as to the reasonable doubt claim. Petitioner must be retried within 180 days or released.
3. Petitioner's remaining claims are **DENIED**.
4. A certificate of appealability is **DENIED** on Petitioner's remaining claims.

/s/ Gerald Austin McHugh
United States District Judge

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