

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

MONTRELL OLIVER,
Petitioner,
v.
SUPERINTENDENT BARRY SMITH,
ET AL.,
Respondents.
CIVIL ACTION
No. 16-cv-5537

ORDER

AND NOW, this 9th day of January 2024, upon consideration of Petitioner Montrell Oliver's "Petition for Writ of Habeas Corpus" (ECF No. 45), Respondent the District Attorney of Philadelphia County's "Response to Amended Petition for Writ of Habeas Corpus" (ECF No. 50), Petitioner's "Memorandum in Reply to Respondent's Response" (ECF No. 61), the Report and Recommendation of the United States Magistrate Elizabeth T. Hey (ECF No. 77), Transcript of the Evidentiary Hearing dated Aug. 24, 2022, (ECF No. 89), Judge Hey's "Amended Report and Recommendation" (ECF No. 93), and Petitioner's "Objection to Report and Recommendations" (ECF No. 94), it is hereby ORDERED that:

- 1. The Report and Recommendation, as amended, (ECF No. 93) is APPROVED AND ADOPTED.
2. The petition for writ of habeas corpus is GRANTED with respect to Petitioner's claim of ineffective assistance of counsel ("IAC") for failing to investigate and present testimony from alibi witnesses.

3. Execution of the writ is **STAYED** for 180 days to permit the Commonwealth to retry Petitioner.
4. In all other respects, the writ is **DENIED**.
5. A certificate of appealability shall not issue.

**BY THE COURT:**

*/s/ Mitchell S. Goldberg*  
**MITCHELL S. GOLDBERG, J.**