UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ERIC BUNDY, Petitioner, v. MARK GARMAN; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; and THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, Respondents.	:	No. 2:17-cv-03308

O R D E R

AND NOW, this 24th day of April, 2019, upon consideration[1] of the Petition for Writ of Habeas Corpus, ECF No. 1; the Response to the Petition, ECF No. 23; the Report and Recommendation (R&R) of United States Magistrate Judge Elizabeth T. Hey, ECF No. 25; and Respondents' Motion for Immediate Stay and Appointment of Counsel for Petitioner, ECF No. 27, **IT IS ORDERED THAT**:

1. The R&R, ECF No. 25, is **APPROVED** and **ADOPTED**.

[1] When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). "When no objections are filed, the district court need only review the record for plain error or manifest injustice." *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at *2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at *16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts "are not required to make any separate findings or conclusions when reviewing a Magistrate Judge's recommendation de novo under 28 U.S.C. § 636(b)"); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge's report and recommendation for clear error). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

2. The petition for writ of habeas corpus is **GRANTED** with respect to Petitioner's claims that his Confrontation Clause rights were violated by the introduction of the statement his co-defendant gave to the police without proper redaction and that his sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

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. This case is **CLOSED**.

6. There is no basis for the issuance of a certificate of appealability.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge