

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

JUNIOR VILLANUEVA,

Petitioner,

v.

SUPERINTENDENT CLARK, et al.,

Respondents.

CIVIL ACTION NO. 17-610

ORDER

AND NOW, this 6th day of December 2019, after a careful and independent consideration of the Petition for a Writ of Habeas Corpus and of the Report and Recommendation (“R&R”) of the assigned Magistrate Judge [Doc. No. 16], Petitioner’s objections thereto [Doc. No. 23], and the entire record in this case, and for the reasons stated in the accompanying Memorandum Opinion it is hereby **ORDERED** that Petitioner’s Petition for Writ of Habeas Corpus [Doc. No. 1] is **GRANTED in part and DENIED in part** as follows:

- 1) Claim three is **GRANTED**. Accordingly, it is further **ORDERED** that petitioner’s conviction and sentence are **VACATED**. The petitioner shall be released from custody (subject to any detainers) unless a retrial by the Commonwealth has commenced on or before April 6, 2020.
- 2) Claims one, two, four, and five are **DENIED** without an evidentiary hearing.
- 3) As to claims one, two, four, and five, there is no probable cause to issue a certificate of appealability¹; and
- 4) The Clerk of Court is directed to **CLOSE** the case.

It is so **ORDERED**.

BY THE COURT:

/s/ **Cynthia M. Rufe**

CYNTHIA M. RUFÉ, J.

¹ There is no basis for concluding that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation omitted).