UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ANDREW J. ALLAM, SR., Petitioner	:	
v.	:	CASE NO. 1:14-CV-1940
LAUREL HARRY, Respondent	:	

M E M O R A N D U M

I. Introduction

Presently before the court is the report (Doc. 34) entered by Chief Magistrate Judge Susan E. Schwab, recommending that petitioner Andrew J. Allam, Sr.'s petition for a writ of habeas corpus (Doc. 1) be denied. Petitioner has raised numerous objections to the report, (see Doc. 35), but has only briefed two main issues, (see Doc. 36). For the following reasons, the court will overrule Petitioner's objections and deny his petition for a writ of habeas corpus.

II. Background

The detailed factual and procedural background of this case has been fully set forth in Judge Schwab's report, (see Doc. 34 at 2-21), and knowledge of that extensive background is presumed. Seeking relief under 28 U.S.C. § 2254, Petitioner claims that (1) the state criminal information charging him with fifty-six counts relating to the sexual abuse

of a minor[1] was constitutionally defective, and (2) there was insufficient evidence to convict him of all but one of those fifty-six counts.

Regarding habeas claim one, Petitioner contends that the state criminal information (Doc. 27-1 at 52-61), as outlined in Judge Schwab's report, (see Doc. 34 at 2-3 & nn.1-7), "was defective and violated the due process and double jeopardy clauses of the United States Constitution." (Doc. 36 at 13). Petitioner maintains that the information lacked sufficient specificity regarding the charged offenses, and therefore contravenes clearly established federal law concerning the constitutional requirements of a charging instrument. (Doc. 27 at 57-75). Claim one was adjudicated on the merits in state court. (Doc. 34 at 31-32).

In habeas claim two, Petitioner argues that there was insufficient evidence to support fifty-five of the fifty-six counts of conviction. (Doc. 27 at 75-83). Petitioner contends that the evidence presented at trial was too equivocal and lacked sufficient "differentiation" between the multiple sets of identical counts charged to support the convictions on all but one of the charges. Claim two was not adjudicated on the merits in state court. (Doc. 34 at 36-37).

On February 21, 2017, Judge Schwab issued a fifty-two page report, recommending that Petitioner's claims for habeas relief be denied. (Doc. 34). On March 1, 2017, Petitioner filed objections to Judge Schwab's report and recommendation. This matter is now ripe for disposition.

[1] Petitioner was charged with three counts of child rape, five counts of involuntary deviate sexual intercourse ("IDSI") with a person less than 13 years old, fifteen counts of IDSI with a person less than 16 years old, seventeen counts of statutory sexual assault, five counts of indecent assault of a person less than 13 years old, ten counts of indecent assault of a person less than 16 years old, and one count of corruption of a minor. (Doc. 34 at 2-3).

III. Discussion

When a party objects to a magistrate judge's report and recommendation, the district court must review de novo the contested portions of the report. 28 U.S.C. § 636(b)(1)(C); M.D. Pa. Local Rule 72.3. Uncontested portions of the report are reviewed for "clear error on the face of the record." Clouser v. Johnson, 40 F. Supp. 3d 425, 430 (M.D. Pa. 2014) (quoting Cruz v. Chater, 990 F. Supp. 375, 375-78 (M.D. Pa. 1998) (quoting 1983 Advisory Committee Notes to Federal Rule of Civil Procedure 72(b))). Here, Petitioner has raised two main objections to the magistrate judge's report, and they will be addressed in turn.

A. Habeas Claim One – Defective State Criminal Information

Judge Schwab disagreed with Petitioner's claim that his state criminal information violated clearly established federal law and therefore permitted relief under 28 U.S.C. § 2254(d)(1). In her report, she reasoned that although Petitioner relied on Russell v. United States, 369 U.S. 749 (1962), as the "clearly established" federal law regarding the sufficiency of charging instruments, that case's general criteria for indictment sufficiency are too broad to establish the specific rule Petitioner attempts to assert on habeas review. Furthermore, although Petitioner provided a Sixth Circuit case that supports his deficient-information contention, only holdings of the Supreme Court of the United States constitute clearly established federal law for the purposes of section 2254(d)(1). Thus, even if Petitioner's information ran afoul of that Sixth Circuit decision, Petitioner still had not met the requirements of section 2254(d)(1) because that circuit decision was not clearly established federal law.

Petitioner contends that Judge Schwab erred by "doom[ing his] claim because he did not cite a Supreme Court opinion in which the Supreme Court found a charging document that was similar to his constitutionally inadequate." (Doc. 36 at 15-16). He argues instead that the state court's decision finding his charging instrument adequate was contrary to clearly established federal law set forth by the Supreme Court in Russell. He contends that the criminal information is contrary to the holding of Russell because it "did not provide adequate notice to [Petitioner]." (Id. at 15). Additionally, Petitioner maintains that the Sixth Circuit case he cited—Valentine v. Konteh, 395 F.3d 626 (6th Cir. 2005)—was presented as "persuasive authority" that exemplified other federal courts finding that a charging instrument like his did not pass constitutional muster under Russell; it was not meant to provide the clearly established federal law under section 2254(d)(1).

Under 28 U.S.C. § 2254(d), "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits" unless such adjudication "resulted in a decision that was contrary to . . . clearly established Federal law, *as determined by the Supreme Court of the United States*." 28 U.S.C. § 2254(d)(1) (emphasis added). Under section 2254(d)(1), a state court decision is contrary to Supreme Court precedent if the state court reached a "conclusion opposite to that reached by th[e Supreme] Court on a question of law or if the state court decides a case differently than th[e Supreme] Court has on a set of materially indistinguishable facts." Marshall v. Hendricks, 307 F.3d 36, 51 (3d Cir. 2002) (alterations in original) (quoting Williams v. Taylor, 529 U.S. 362, 413 (2000)). The Supreme Court has repeatedly admonished that only its decisions can provide the established legal propositions that will support habeas

relief under section 2254(d)(1). See Lopez v. Smith, 135 S. Ct. 1, 3-4 (2014) (per curiam). Moreover, "Circuit precedent cannot refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that [the Supreme] Court has not announced." Id. at 4 (citation and internal quotation marks omitted).

Here, the state criminal information provided the initials of the minor victim, stated the elements of the charges, gave notice of the crimes charged by citing to the exact criminal statutory sections and subsections, and indicated the severity of those charges. (See Doc. 27-1 at 52-61). Furthermore, after Petitioner requested a bill of particulars providing, among other things, the dates, times, and locations of the various charged offenses, the state prosecutor responded by providing a specific timeframe for when the multiple sexual crimes allegedly were committed against the minor victim. (Doc. 27-2 at 42). Both the Pennsylvania Court of Common Pleas and the Pennsylvania Superior Court upheld the constitutionality of the information. (Doc. 27-2 at 52-54, 116-19). Petitioner's state collateral review petition, which also challenged the constitutionality of the information, was dismissed, that dismissal was affirmed by the Superior Court, and the Supreme Court of Pennsylvania denied a petition for allowance of appeal. (Doc. 27-2 at 219-72).

Notably, Petitioner has not pointed to any Supreme Court case that holds that such a charging instrument violates the Constitution by providing inadequate notice to a defendant. To the extent that Petitioner contends that there exists a clearly established constitutional right to a charging instrument that provides "differentiated" charges, which include distinct facts underlying every similar offense charged when the alleged course of criminal conduct took place over an extended period of time, this court disagrees. Unless

and until the Supreme Court of the United States provides such a specific rule, Petitioner cannot meet the requirements of section 2254(d)(1) for this particular claim. It is of no matter that Valentine may provide such a rule, because circuit court precedent will not suffice, nor can it "refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that [the Supreme] Court has not announced." Lopez, 135 S. Ct. at 4.

Petitioner's reliance on Valentine to exemplify that a charging instrument like his violates Russell's mandates is certainly understandable. See Valentine, 395 F.3d at 630-35 (finding, under substantially similar facts, that groups of carbon-copy charges—with no factual differentiation—regarding sexual abuse of a minor stepchild over a period of time violated Valentine's due process and double jeopardy rights under Russell). The insurmountable problem for Petitioner is that Valentine is not a determination "by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). And to the extent that the Sixth Circuit in Valentine determined that Russell's holding encompassed specific charging-instrument situations like that of Petitioner, thereby allowing federal habeas relief under section 2254(d)(1), this court does not agree. Until the Supreme Court promulgates a rule like that found in Valentine, it is not clearly established that Petitioner's charging instrument was constitutionally deficient.[2] Thus, it cannot be said that the state court's decision to uphold the criminal information in this case "was contrary to . . . clearly

[2] It is worth mentioning that the Sixth Circuit itself has found, albeit in a nonprecedential opinion, that a petitioner seeking habeas relief under 28 U.S.C. § 2254(d)(1) by alleging the deficiency of a charging instrument similar to Petitioner's most likely cannot rely on Valentine to satisfy the requirements of section 2254(d)(1). Coles v. Smith, 577 F. App'x 502, 507-08 (6th Cir. 2014) (nonprecedential) ("[B]ecause no Supreme Court case has ever found the use of identically worded and factually indistinguishable [state] indictments *unconstitutional*, we doubt our authority to rely on our own prior decision—Valentine—to independently authorize habeas relief under AEDPA. Rather, Coles must point to a Supreme Court case that would mandate habeas relief in his favor." (alteration in original) (internal quotation marks and citations omitted)).

established Federal law," as section 2254(d)(1) requires. Id. Consequently, Petitioner's objections are overruled and his first habeas claim must be denied.

B. Habeas Claim Two – Sufficiency of the Evidence/Ineffective Assistance of Counsel

As Judge Schwab observed, Petitioner has conceded that he procedurally defaulted on his sufficiency-of-the-evidence claim. (Doc. 34 at 36, 37; Doc. 27 at 46-49). While a sufficiency challenge was raised by Petitioner's trial counsel at the close of the state's case, this issue was not preserved on direct appeal. (Doc. 27 at 36). Petitioner's initial-review collateral counsel also failed to raise the sufficiency-of-the-evidence claim on initial state collateral review, as collateral-review counsel had determined that the claim had been waived for failure to assert it on direct appeal. (Id. at 47-48 (citing initial-review collateral counsel's letter of no merit)). Initial-review collateral counsel also failed to raise a claim of ineffective assistance of direct-appeal counsel for failure to preserve the sufficiency-of-the-evidence claim on appeal. (Id. at 48). As Petitioner admits, such a claim is now time-barred in state court. (Id. at 48-49). However, he maintains that this procedural default can be excused as both cause and prejudice exist to permit federal habeas review. (Id. at 49-54).

Judge Schwab first determined that Petitioner could not show "cause" to excuse the procedural default on the sufficiency-of-the-evidence claim. She provided two reasons, both of which implicate Martinez v. Ryan, 566 U.S. 1 (2012), the primary case upon which Petitioner relies.

First, Judge Schwab determined that because Petitioner's procedurally defaulted claim was a sufficiency-of-the-evidence claim, rather than an ineffective-assistance-of-trial-counsel claim, Petitioner's argument "falters at the start." (Doc. 34 at

39-40). Second, even if Petitioner were asserting an ineffective-assistance-of-direct-appeal counsel claim, because the exception in Martinez dealt only with ineffective assistance of trial counsel, that case's narrow holding does not extend to Petitioner's case.

Then, assuming only hypothetically that Petitioner could establish cause, Judge Schwab determined that Petitioner could not show prejudice on this claim due to the presence of sufficient record evidence to uphold his convictions. Finally, Judge Schwab found that even if Petitioner could surmount the cause and prejudice hurdles to excuse procedural default, a merits analysis of the sufficiency-of-the-evidence claim would likewise result in a denial of Petitioner's claim, as evidenced by the comprehensive prejudice-prong analysis.

In his objections, Petitioner counters that the sufficiency-of-the-evidence claim was procedurally defaulted due to ineffective assistance of counsel in failing to preserve the claim on direct appeal. Then, because initial-review collateral counsel was aware of the inadvertent omission of the sufficiency-of-the-evidence claim on appeal, but failed to raise an ineffective-assistance-of-direct-appeal-counsel claim, initial-review collateral counsel was also constitutionally ineffective. In other words, Petitioner makes a layered ineffective-assistance-of-counsel claim to attempt to establish cause for the procedural default of the sufficiency-of-the-evidence claim.

Petitioner also disagrees with Judge Schwab's finding that sufficient evidence existed to convict Petitioner on all fifty-six counts. He contends that estimates and other equivocal language contained in the record regarding the number of sexual encounters are insufficient to support a conviction on all of the fifty-six counts charged.

Generally, if a prisoner has procedurally defaulted on a claim in state-court proceedings, a federal court will not review the merits of the claim, even one that implicates constitutional concerns. Martinez v. Ryan, 566 U.S. 1, 9 (2012) (citing Coleman v. Thompson, 501 U.S. 722, 747-48 (1991) and Wainwright v. Sykes, 433 U.S. 72, 84-85 (1977)). One exception to this rule is that "[a] prisoner may obtain federal review of a defaulted claim by showing cause for the default and prejudice from a violation of federal law." Id. at 10 (citing Coleman, 501 U.S. at 750). "Cause for a procedural default exists where something *external* to the petitioner, something that cannot fairly be attributed to him[,] . . . impeded [his] efforts to comply with the State's procedural rule." Maples v. Thomas, 565 U.S. 266, 280 (2012) (alterations in original) (citations and internal quotation marks omitted). To establish prejudice, a petitioner must show not merely that there were errors that created a possibility of prejudice, but that they "worked to his *actual* and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." Holland v. Horn, 519 F.3d 107, 112 (3d Cir. 2008) (quoting United States v. Frady, 456 U.S. 152, 170 (1982)).

In Coleman, the Supreme Court held that ineffectiveness of post-conviction counsel does not qualify as "cause" to excuse procedural default, as there is "no constitutional right to an attorney in state post-conviction proceedings." Coleman, 501 U.S. at 752. In Martinez, however, the Court provided a narrow exception to this rule. There, the Court held that

> [w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding . . . counsel in that proceeding was ineffective.

Martinez, 566 U.S. at 17. Pennsylvania is such a state with a bright-line rule that requires ineffective-assistance-of-counsel claims to be raised on collateral review. See Cox v. Horn, 757 F.3d 113, 124 n.8 (3d Cir. 2014) (citing Commonwealth v. Grant, 813 A.2d 726, 738 (Pa. 2002)).

Although Petitioner asserts that both direct-appeal counsel and initial-review collateral counsel were ineffective, he provides scant support for this contention. For direct-appeal counsel, Petitioner simply states, "in objecting at trial at the close of the prosecution's case, trial counsel demonstrated that he was aware of the existence of the [sufficiency-of-the-evidence] claim[, y]et he failed to raise it on direct appeal." (Doc. 36 at 17 (citation omitted)). For initial-review collateral counsel, Petitioner explains that even though collateral counsel was aware that claims regarding the sufficiency of the evidence should have been preserved on direct appeal and were not, "[collateral] counsel failed to raise an ineffective assistance of counsel claim which would have prompted a review of the sufficiency of the evidence." (Id. (citation omitted)).

Like Judge Schwab, however, this court will forego a Strickland analysis regarding whether the alleged actions of direct-appeal counsel and initial-review collateral counsel rose to the level of Sixth-Amendment violations. Such an analysis is unnecessary for two reasons. First, as Judge Schwab correctly determined, Petitioner cannot rely on Martinez to excuse the procedural default of the sufficiency-of-the-evidence claim. Second, even if Petitioner could utilize Martinez to establish cause for the procedural default, Petitioner cannot show prejudice because the record evidence is sufficient to support Petitioner's convictions.

1. Martinez Does Not Apply to Petitioner's Case

As noted above, Judge Schwab provided two reasons why Petitioner cannot avail himself of the Martinez holding to excuse the procedural default of his sufficiency-of-the-evidence claim. First, because Petitioner defaulted on a sufficiency claim, Judge Schwab determined that Martinez simply does not apply because that case only provided a narrow exception for procedurally defaulted ineffective-assistance-of-trial-counsel claims, not other types of claims like sufficiency of the evidence. Second, even if Petitioner were asserting ineffective assistance of counsel rather than trying to resurrect an actual sufficiency-of-the-evidence claim, because the exception in Martinez dealt only with ineffective assistance of trial counsel, that case's narrow holding does not extend to ineffective assistance of direct-appeal counsel. The court finds Judge Schwab's second reason most compelling.

In Martinez, the Court held that although ineffective assistance of collateral-review counsel generally will not be cause for procedural default of a claim in state court, a narrow exception exists when ineffective assistance of initial-review collateral counsel caused the default of a substantial ineffective-assistance-of-trial-counsel claim. Martinez, 566 U.S. at 14, 17. In other words, if an arguably meritorious claim of ineffectiveness of trial counsel is procedurally defaulted, ineffective assistance of initial-review collateral counsel may provide cause to excuse the default, thereby allowing the trial-counsel-ineffectiveness claim to be heard on federal habeas review. Id.

While the holding of Martinez discusses only ineffective-assistance-of-trial-counsel claims that have been procedurally defaulted, when Martinez is read together with other Supreme Court habeas precedent, it follows that Martinez could potentially

reach other types of defaulted claims under the right circumstances.[3] As the Supreme Court has held, and Judge Schwab noted, "a procedurally defaulted ineffective-assistance-of-counsel claim can serve as cause to excuse the procedural default of another habeas claim, so long as the petitioner can satisfy the 'cause and prejudice' standard with respect to the ineffective-assistance claim itself." Edwards v. Carpenter, 529 U.S. 446, 450-51, 453 (2000) (permitting federal habeas review of a defaulted sufficiency-of-the-evidence claim that was not preserved due to ineffective assistance of direct-appeal counsel and which ineffectiveness-of-direct-appeal-counsel claim had also been defaulted, so long as petitioner could show "cause and prejudice" to excuse the default of the ineffectiveness claim itself). Martinez potentially supplies an avenue for establishing the cause required by Edwards, providing that in certain circumstances, ineffective assistance of initial-review collateral counsel may establish cause to excuse the procedural default of an ineffectiveness-of-counsel claim. See supra note 3.

While Petitioner ultimately desires to challenge the sufficiency of the evidence on federal habeas review, in order to excuse the procedural default of this sufficiency claim he asserts ineffective assistance of both direct-appeal counsel and initial-review collateral counsel. Under Petitioner's reasoning, Martinez allows federal habeas review of his sufficiency claim because (1) direct-appeal counsel was ineffective for failing to preserve the claim, thereby excusing the procedural default of the sufficiency claim, and (2) initial-review collateral counsel was ineffective for not recognizing and

[3] As will be explained in greater detail below, these circumstances most likely exist only where, as in the Ninth Circuit, Martinez is extended to direct-appeal-counsel-ineffectiveness claims. Because neither the Third Circuit nor the Supreme Court has addressed this issue directly, it thus remains theoretically possible that Edwards and Martinez together could create the legal justification for federal habeas review of a defaulted sufficiency-of-the-evidence claim.

raising direct-appeal counsel's ineffectiveness, thereby excusing the procedural default of the direct-appeal ineffectiveness claim.

The fatal problem with Petitioner's argument is that his reasoning relies on the alleged ineffectiveness of direct-appeal counsel, rather than trial counsel. This distinction makes all the difference.

After Martinez was decided, the question arose as to whether its holding applied only to defaulted claims of ineffective assistance of trial counsel, or also to defaulted claims of ineffectiveness of direct-appeal counsel. This is not an abstract question because, as in Petitioner's case, trial counsel and appellate counsel are often one and the same.

As Judge Schwab observed, there is a circuit split on this issue. Although the Third Circuit has yet to weigh in, nearly all of the circuits that have addressed the issue favor a narrow reading of Martinez. See Long v. Butler, 809 F.3d 299, 314-15 (7th Cir. 2015) (Martinez does not apply to defaulted claims of ineffective assistance of appellate counsel), reh'g granted, vacated on other grounds, No. 13-3327, 2016 WL 1621711 (7th Cir. Apr. 20, 2016); Dansby v. Hobbs, 766 F.3d 809, 833 (8th Cir. 2014) ("We . . . decline to extend Martinez to claims alleging ineffective assistance of counsel on direct appeal."); Reed v. Stephens, 739 F.3d 753, 778 n.16 (5th Cir. 2014) (indicating, in dicta, that it would not extend Martinez to ineffective-assistance-of-appellate-counsel claims); Hodges v. Colson, 727 F.3d 517, 531 (6th Cir. 2013) (holding that, under Martinez, "ineffective assistance of post-conviction counsel cannot supply cause for procedural default of a claim of ineffective assistance of appellate counsel"); Banks v. Workman, 692 F.3d 1133, 1148 (10th Cir. 2012) (accord). Only the Ninth Circuit has held

that Martinez applies to claims of ineffective assistance of direct-appeal counsel. See Ha Van Nguyen v. Curry, 736 F.3d 1287, 1295 (9th Cir. 2013) ("We . . . conclude that the Martinez standard for 'cause' applies to all Sixth Amendment ineffective-assistance claims, both trial and appellate, that have been procedurally defaulted by ineffective counsel in the initial-review state-court collateral proceeding.").

Courts in this district and in the other districts in Pennsylvania have consistently followed the majority view. See Robertson v. Pa. Attorney Gen., No. 4:CV-10-0833, 2014 WL 4977508, at *8 (M.D. Pa. Oct. 3, 2014); Jordan v. Rozum, No. 13-2503, 2016 WL 5673913, at *6-7 (E.D. Pa. Oct. 3, 2016); Bush v. Giroux, No. 14-221, 2016 WL 4734242, *11 (W.D. Pa. Sept. 12, 2016); Ridgeway v. Folino, No. 12-5092, 2014 WL 12480030, *8 n.6 (E.D. Pa. Jan. 28, 2014). In accord with the vast majority of circuit courts and Pennsylvania district courts that have addressed this issue, this court finds that Martinez's narrow exception applies only to claims of ineffectiveness of trial counsel and does not extend to claims of ineffectiveness of direct-appeal counsel. As such, Petitioner cannot show cause to excuse the procedural default of the sufficiency-of-the-evidence claim.

2. Petitioner Cannot Show Prejudice to Excuse Default of His Sufficiency Claim

Even if Petitioner could utilize Martinez to establish cause to excuse the procedural default of his sufficiency claim, and even if Petitioner could also show that both direct-appeal counsel and initial-review collateral counsel were constitutionally ineffective under the Strickland standard, his claim would still fail because he cannot show prejudice. Judge Schwab thoroughly analyzed the sufficiency-of-the-evidence claim in her report, concluding that there was sufficient record evidence to convict

Petitioner of all the counts brought against him. (See Doc. 34 at 42-50). Accordingly, she determined that Petitioner could not show that he was prejudiced by the purported state-court errors in order to excuse the procedural default of the sufficiency claim.

Petitioner counters that the record evidence, which contained "estimates" and "qualifying terms" in the testimony such as "'maybe,' 'probably[,]' or 'about,'" was insufficient to support convictions on the multiple, undifferentiated counts. (Doc. 36 at 18). According to Petitioner, "no rational trier of fact could convict" Petitioner on the numerous separate counts "without some minimal differentiation between the counts at some point in the proceeding." (Id.) Petitioner, however, provides no authority for these contentions.

In reviewing sufficiency-of-the-evidence claims, the court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). This is a highly deferential standard, United States v. Hodge, 321 F.3d 429, 439 (3d Cir. 2003), and requires that reviewing courts ask whether the jury's verdict was "*merely rational*," United States v. Caraballo-Rodriguez, 726 F.3d 418, 431, 434 (3d Cir. 2013) (en banc) (citing Coleman v. Johnson, 566 U.S. 650, 656 (2012)).

After review of Judge Schwab's comprehensive analysis regarding the sufficiency of the evidence, consideration of Petitioner's objections, and independent examination of the record, this court has little difficulty concluding that sufficient record evidence exists to support the jury's guilty verdict on all fifty-six counts. The court will not repeat Judge Schwab's analysis, but instead will adopt the meticulous discussion

contained on pages forty-two through forty-nine of her report. (See Doc. 34 at 42-49). Accordingly, Petitioner's objections on this issue are overruled and his sufficiency-of-the-evidence claim must be denied, as he can show neither cause nor prejudice to excuse the procedural default of this claim.[4]

C. Remaining Undeveloped Habeas Claims

Petitioner raised a host of other claims in his habeas petition, but provided no supporting briefing or argument. Judge Schwab reviewed the claims, and determined they were meritless. (Doc. 34 at 50-51). Petitioner did not object to these determinations. After review for clear error on the face of the record, the court finds none, and adopts Judge Schwab's analysis and determinations on these remaining claims. As such, these claims are denied.

IV. Conclusion

For the foregoing reasons, the court will overrule Petitioner's objections to Magistrate Judge Schwab's report and recommendation, and will deny his petition for a writ of habeas corpus. An appropriate order will follow.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

[4] As Judge Schwab correctly noted, (see Doc. 34 at 49-50), a merits review of the sufficiency-of-the-evidence claim—if it were warranted, which it is not—would yield similar analysis and results as the determination of whether prejudice exists to excuse Petitioner's procedural default.