

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

JEFFREY ARMOLT,	:	1:15-cv-1642
	:	
Petitioner,	:	
	:	Hon. John E. Jones III
v.	:	
	:	Hon. Martin C. Carlson
JOHN KEREKSTES, <i>et al.</i> ,	:	
	:	
Respondents.	:	

ORDER

September 14, 2015

AND NOW, upon consideration of the Report and Recommendation of Chief United States Magistrate Judge Martin C. Carlson (Doc. 8), recommending that we grant Petitioner’s motion for leave to proceed *in forma pauperis* (Doc. 2), but that we deny his request for appointment of counsel (Doc. 3), and dismiss his petition for writ of habeas corpus (Doc. 1) without prejudice to Petitioner requesting leave from the Court of Appeals to pursue a second and successive federal habeas corpus petition, after an independent review of the record, and noting that Petitioner filed objections (Doc.10),¹ and the Court finding Judge

¹ Where objections to a magistrate judge’s report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. *Supinski v. United Parcel Serv.*, Civ. A. No. 06-0793, 2009 WL 113796, at *3 (M.D. Pa. Jan. 16, 2009) (citing *Sample v. Diecks*, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). “In this regard, Local

Carlson’s analysis to be thorough, well-reasoned, and fully supported by the record, and the Court further finding Petitioner’s objections to be without merit² and squarely addressed by Judge Carlson’s report **IT IS HEREBY ORDERED**

THAT:

1. The Report and Recommendation of Magistrate Judge Carlson (Doc. 8) is **ADOPTED** in its entirety.
2. The Petitioner’s Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is **GRANTED**.
3. The Petitioner’s request for appointment of counsel (Doc. 3) is **DENIED**.
4. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED WITHOUT PREJUDICE** to the Petitioner requesting leave from the

Rule of Court 72.3 requires ‘written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.’” *Id.* (citing *Shields v. Astrue*, Civ. A. No. 07-417, 2008 WL 4186951, at *6 (M.D. Pa. Sept. 8, 2008)).

² Petitioner’s objections present the Court with no availing argument to contravene the Magistrate Judge’s correct conclusion that Petitioner’s pleading, cast as a motion under Rule 60(b) of the Federal Rules of Civil Procedure, is actually a second and successive federal petition for writ of habeas corpus. Thus, as the Magistrate Judge appropriately notes, dismissal without prejudice is appropriate here, and the Petitioner must follow the dictates of the AEDPA – being that he must first present this second and successive petition to the Court of Appeals.

Court of Appeals to pursue a second and successive federal habeas corpus petition.

5. The Clerk of Court shall **CLOSE** this case.

s/ John E. Jones III
John E. Jones III
United States District Judge