

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

JOSEPH BERNARD FITZPATRICK, III,	:	
Petitioner	:	No. 1:16-cv-02256
	:	
v.	:	(Judge Kane)
	:	
JOHN E. WEITZEL, et al.,	:	(Chief Magistrate Judge Schwab)
Respondents	:	

ORDER

Before the Court is the July 28, 2017 Report and Recommendation of Magistrate Judge Schwab (Doc. No. 10), recommending that the Court deny Petitioner Joseph Bernard Fitzpatrick, III's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1), and the Commonwealth of Pennsylvania's motion to dismiss (Doc. No. 4). No timely objections have been filed. **ACCORDINGLY**, on this 28th day of July 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation of Magistrate Judge Schwab (Doc. No. 10);
2. Petitioner Joseph Bernard Fitzpatrick, III's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1), is **DISMISSED WITHOUT PREJUDICE as MOOT**;¹
3. The Commonwealth of Pennsylvania's motion to dismiss (Doc. No. 4), is **DENIED as MOOT**;
4. No certificate of appealability shall issue, as the Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); and
5. The Clerk is directed to **CLOSE** this case.

s/Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

¹ The Court is persuaded that the instant petition, premised entirely on Petitioner's detention without a judgment of conviction, was rendered moot upon the Superior Court of Pennsylvania's issuance of an order vacating the trial court's order that granted Petitioner's post-sentence motion for judgment of acquittal, and directing reinstatement of the judgment of conviction.