

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

LAVON D. CHISLEY,

Petitioner,

v.

SUPERINTENDENT KEVIN  
KAUFFMAN, *et al.*,

Respondents.

No. 4:16-CV-01980

(Judge Brann)

(Magistrate Judge Carlson)

**ORDER**

**MARCH 25, 2020**

LaVon D. Chisley, a Pennsylvania state prisoner, filed this 28 U.S.C. § 2254 petition seeking to vacate his convictions and sentence.<sup>1</sup> Chisley raises numerous claims in his petition, including several claims of ineffective assistance of counsel and claims related to purportedly erroneous jury instructions and an illegal sentence.<sup>2</sup>

In November 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court deny the petition.<sup>3</sup> Magistrate Judge Carlson recommends finding that Chisley's claims are procedurally defaulted, and that no exceptions would permit this Court to consider the claims.<sup>4</sup> He also

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<sup>1</sup> Doc. 1.

<sup>2</sup> *Id.*; Doc. 26.

<sup>3</sup> Doc. 27.

<sup>4</sup> *Id.* at 19-22.

concludes that, regardless of whether Chisley’s claims were properly exhausted, they are without merit.<sup>5</sup>

After receiving an extension of time, Chisley filed timely objections to the Report and Recommendation.<sup>6</sup> Chisley raises five primary objections, asserting that Magistrate Judge Carlson erred in: (1) giving deference to the state court rulings when there was no evidentiary hearing and, thus, no adjudication on the merits in state court; (2) concluding that Chisley’s claims are procedurally defaulted; (3) failing to conduct an evidentiary hearing; (4) failing to recognize that the state court proceedings were unfair and denied due process to Chisley; and (5) failing to address material facts that are in dispute.<sup>7</sup> Chisley devotes the remainder of his objections to rearguing the merits of some of his underlying claims.<sup>8</sup>

“If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”<sup>9</sup> Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or

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<sup>5</sup> *Id.* at 23-38.

<sup>6</sup> Doc. 30.

<sup>7</sup> *Id.* at 2-12.

<sup>8</sup> *Id.* at 12-28.

<sup>9</sup> *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

recommendations.<sup>10</sup> Upon de novo review, the Court finds no error in Magistrate Judge Carlson's Report and Recommendation. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 27) is **ADOPTED**;
2. Chisley's 28 U.S.C. § 2254 petition (Doc. 1) is **DENIED**;
3. The Court declines to issue certificate of appealability;<sup>11</sup> and
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

*s/ Matthew W. Brann*  
Matthew W. Brann  
United States District Judge

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<sup>10</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.

<sup>11</sup> See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (setting forth legal standard).