

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

Gary Calhoun v. David Close, Superintendent; District Attorney of
Cambria County; and Attorney General of the State of Pennsylvania

Calhoun · No. Civil Action No. 25-169-J; 3:25-cv-00169 · Decided May 21, 2026

SUMMARY

The United States District Court for the Western District of Pennsylvania adopted a magistrate judge’s Report and Recommendation and dismissed Gary Calhoun’s 28 U.S.C. § 2254 habeas petition for lack of subject matter jurisdiction. The court concluded that the petition was second or successive and that Calhoun had not obtained authorization from the Third Circuit to file it, and it denied a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the Western District of Pennsylvania
WRITING FOR THE COURT	W. Scott Hardy
JURISDICTION	United States District Court for the Western District of Pennsylvania
DECIDED	May 21, 2026
DOCKET	Civil Action No. 25-169-J; 3:25-cv-00169
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2254. After a magistrate judge recommended dismissal for lack of subject matter jurisdiction and denial of a certificate of appealability, Petitioner filed no objections. The district court reviewed the recommendation for plain error, adopted it, dismissed the petition, and denied a certificate of appealability.
STANDARD OF REVIEW	When no timely objection is filed to a magistrate judge's report and recommendation, the district court reviews for plain error or clear error on the face of the record rather than conducting de novo review.
PRECEDENTIAL VALUE	unpublished
PARTIES	Gary Calhoun v. David Close, Superintendent, District Attorney of Cambria County, Attorney General of the State of Pennsylvania

TOPICS

federal habeas corpus successive petitions subject matter jurisdiction appellate procedure
standard of review

PRACTICE AREAS

federal habeas corpus post-conviction relief federal civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the district court had subject matter jurisdiction over Calhoun's § 2254 petition when the petition challenged a conviction previously attacked in an earlier habeas proceeding and Calhoun had not obtained authorization from the Third Circuit to file a second or successive petition.
2. What standard of review applied to the magistrate judge's Report and Recommendation when Calhoun filed no timely objections.
3. Whether a certificate of appealability should issue.

HOLDINGS

1. The petition was a second or successive habeas petition because it challenged the same criminal conviction previously attacked by Calhoun, and the district court therefore lacked subject matter jurisdiction because Calhoun had not obtained authorization from the Third Circuit.
2. Because Calhoun filed no timely objections to the Report and Recommendation, the district court reviewed the recommendation for plain error and, finding none, adopted it.
3. A certificate of appealability was denied because jurists of reason would not find it debatable whether the district court had jurisdiction to proceed.

KEY QUOTATIONS

“Failure to timely file objections will waive the right to appeal” (Docket No. 8 at 3)

“Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 6) is DISMISSED for lack of subject matter jurisdiction.” (Order)

FACTUAL BACKGROUND

Gary Calhoun filed a petition under 28 U.S.C. § 2254 challenging a state-court criminal conviction. The court determined that he had previously attacked the same conviction in *Calhoun v. Smith et al.*, No. 17-25-J (W.D. Pa. filed Feb. 27, 2017). Calhoun did not indicate that the Third Circuit had authorized him to file another habeas petition challenging that conviction.

PROCEDURAL HISTORY

Magistrate Judge Maureen P. Kelly issued a Report and Recommendation on July 11, 2025, recommending dismissal because the petition was second or successive and Petitioner had not obtained authorization from the

Third Circuit. Petitioner declined to file objections by the July 28, 2025 deadline. District Judge W. Scott Hardy found no plain error, adopted the Report and Recommendation as the court's opinion, dismissed the petition for lack of subject matter jurisdiction, denied a certificate of appealability, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- *Brightwell v. Lehman*, 637 F.3d 187, 193 (3d Cir. 2011)
- *Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007)
- *Campbell v. U.S. Dist. Ct. for N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974), cert. denied, 419 U.S. 879 (1974)
- *Calhoun v. Smith et al.*, No. 17-25-J (W.D. Pa. filed Feb. 27, 2017)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA GARY CALHOUN,)) Petitioner,)) Civil Action No. 25-169-J v.)) District Judge W. Scott Hardy DAVID CLOSE, Superintendent; DISTRICT) Magistrate Judge Maureen P. Kelly ATTORNEY OF CAMBRIA COUNTY; and) ATTORNEY GENERAL OF THE STATE) OF PENNSYLVANIA,)) Respondents.) MEMORANDUM ORDER This matter comes before the Court after Petitioner Gary Calhoun (“Petitioner”) declined to file objections to the Report and Recommendation (“R&R”) (Docket No. 8) entered by United States Magistrate Judge Maureen P. Kelly on July 11, 2025.

The R&R recommends that Petitioner’s Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) (Docket No. 6) be dismissed for lack of subject matter jurisdiction, and that a certificate of appealability be denied. (Docket No. 8 at 1, 3). Service of the R&R was made on Petitioner via U.S. Mail. (Id. at 3-4 and Docket text entry).

The R&R and Docket text entry informed the parties that objections to same were due by July 28, 2025. (Id. at 3 and Docket text entry). Thereafter, no party filed any objections to the R&R. The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a de novo review of any part of the R&R that has been properly objected to.

See Fed. R. Civ. P. 72(b)(2), (3); 28 U.S.C. § 636(b)(1). Here, however, because Petitioner did not file any objections to the R&R – which explicitly stated, “Failure to timely file objections will waive the right to appeal” – we review the magistrate judge’s decision for plain error. (Docket No. 8 at 3). See *Brightwell v. Lehman*, 637 F.3d 187, 193 (3d Cir.

2011) (citing *Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007)); see also Fed. R. Civ. P. 72(b), Advisory Committee's Note to 1983 Addition ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citing *Campbell v. U.S. Dist. Ct. for N.D. Cal.*, 501 F.2d 196, 206 (9th Cir.), cert. denied, 419 U.S. 879 (1974))).

In this case, upon careful review of the R&R and the entire record, the Court, finding no plain error on the face of the record, will accept Judge Kelly's recommendation. Accordingly, the Court will adopt the R&R as the Opinion of the Court and will dismiss the Petition for lack of subject matter jurisdiction.

In so ruling, the Court agrees with Judge Kelly's conclusion that Petitioner seeks habeas relief from the same criminal conviction in the present matter that he attacked in his prior habeas petition filed in *Calhoun v. Smith et al.*, No. 17-25-J (W.D. Pa. filed Feb. 27, 2017), and that, as such, the present Petition is a second or successive petition under the meaning of the statute.

(Docket No. 8 at 2). The Court further agrees with Judge Kelly that, as Petitioner provides no indication that he has been granted leave to file a second or successive petition by the Third Circuit, this Court lacks subject matter jurisdiction to address the claims raised by Petitioner in his Petition. (Id. at 2-3). Furthermore, the Court agrees with Judge Kelly's recommendation that a certificate of appealability should be denied here, as jurists of reason would not find it debatable whether this Court has jurisdiction to proceed with this case.

(Id. at 3). Accordingly, in view of the foregoing, the Court enters the following Order: AND NOW, this 21st day of May, 2026, IT IS HEREBY ORDERED that the Report and Recommendation (Docket No. 8) is ADOPTED as the Opinion of the Court. IT IS FURTHER ORDERED that Petitioner Gary Calhoun's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 6) is DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED because jurists of reason would not find it debatable whether this Court has jurisdiction to proceed with this case. IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if Petitioner wishes to appeal from this Order he must file a notice of appeal within 30 days, as provided in Rule 3 of the Federal Rules of Appellate Procedure, with the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219.

Petitioner is referred to Rule 22 of the Federal Rules of Appellate Procedure and to 3d Cir. L.A.R. 22.1 for the timing requirements for applying for a certificate of appealability from the Court of Appeals (available at https://www2.ca3.uscourts.gov/legacyfiles/2011_LAR_Final.pdf).

The Clerk of Court shall mark this case closed. /s/ W. Scott Hardy W. Scott Hardy United States District Judge cc/ecf: The Honorable Maureen P. Kelly Gary Calhoun (via U.S. Mail)

