

**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

OPINION

CALHOUN

PER CURIAM.

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)