

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

JOHN D. COOPER,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	NO. 04-886
v.	:	
	:	
	:	
FRANKLIN V. TENNIS, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM

BUCKWALTER, S.J.

October 5, 2005

Magistrate Judge David R. Strawbridge filed his very thorough Report and Recommendation on August 31, 2005. The Petitioner’s objections do nothing more than restate his previous arguments, which Magistrate Judge Strawbridge correctly addressed in his Report and Recommendation.

The Petitioner’s excuse for “his failure to include all fourteen of the unexhausted claims on direct or PCRA appeal” (3rd page of Petitioner’s objections) “was due to the dismissal order from the P.C.R.A. Court’s stated that his P.C.R.A. was untimely file and was dismiss.”

As Magistrate Judge Strawbridge points out, however,

Following the denial of the 2002 Petition, Cooper again filed a timely *pro se* PCRA petition in December 2003 (the “2003 Petition”). (Case No. 2034/2000 docket sheet at 8). As with the 2002 Petition, the PCRA Court (Brenner, J.) appointed counsel and held an evidentiary hearing. (*Id.* at 9). With the benefit of the hearing, the PCRA Court dismissed the 2003 Petition as untimely. (3/8/04 PCRA II, C.P. Ct. Op. at 4). Cooper then appealed the PCRA Court’s dismissal to the Superior Court. While the Superior Court found the petition to be timely filed, it affirmed the PCRA

Court's dismissal on the ground that each issue raised by Cooper in the 2003 Petition had been litigated in the 2002 Petition.

It is unclear whether Petitioner is objecting to the Report and Recommendation's disposition of the four claims appropriately raised on federal review. In any event, those claims were properly decided as set forth in the Report and Recommendation.

An order follows.

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ORDER

AND NOW, this 5th day of October, 2005, upon careful and independent consideration of the petition for a writ of habeas corpus, and after review of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge, and the objections of Petitioner, it is hereby **ORDERED** that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. Pursuant to 28 U.S.C. § 2254(d), the petition for a writ of habeas corpus (Docket No. 1) is DENIED.
3. A certificate of appealability shall not issue because Petitioner has not made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
4. The Clerk of Court shall mark this matter as CLOSED for statistical purposes.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.