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

STEPHEN LEWIS EHRLICH	:	
	:	CIVIL ACTION
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, et al.	:	NO. 04-CV-1719

MEMORANDUM & ORDER

SURRICK, J. **MAY 9, 2005**

Presently before the Court is Petitioner Stephen Lewis Ehrlich's ("Petitioner") Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 (Doc. No. 1), Magistrate Judge Diane M. Welsh's Report and Recommendation recommending denial of the Petition (Doc. No. 10), and Petitioner's objections to the Report and Recommendation (Doc. No. 11). For the following reasons, we will overrule the objections, approve and adopt the Report and Recommendation, and dismiss the Petition.

I. BACKGROUND

A. Factual History and Guilty Plea[1]

On February 14, 1999, Petitioner arrived at Terminal A, Philadelphia International Airport, on a USAir flight from St. Maarten, Netherlands.[2] *Commonwealth v. Ehlrich* [sic], No.

[1] These facts are recounted from the Post Conviction Relief Act ("PCRA") court's findings in *Commonwealth v. Ehlrich* [sic], No. 252-99, mem. op. at 1 (Pa. Ct. Com. Pl. Apr. 30, 2002) (order denying PCRA petition).

[2] Terminal A is located in Tinicum Township, Delaware County. *Id.*; *see also Delaware County v. City of Philadelphia*, 620 A.2d 666 (Pa. Commw. Ct. 1993) (noting that the Philadelphia International Airport "is located partly in Philadelphia County and partly in Delaware County," and specifically stating that Terminal A of the airport is located in Delaware

252-99, mem. op. at 1 (Pa. Ct. Com. Pl. Apr. 30, 2002) (order denying Post Conviction Relief Act ("PCRA") petition). Law enforcement authorities had investigated Petitioner in connection with another narcotics case and were expecting him to arrive in the country with controlled substances. *Id.*; PCRA Hr'g Tr. 7/25/01 at 22-23. Upon disembarking, Petitioner had in his possession two liquor bottles in a sealed cardboard case. *Ehlrich*, No. 252-99, mem. op. at 1-2; PCRA Hr'g Tr. 6/22/01 at 23-24. During screening at customs, Petitioner gave a customs agent permission to open the sealed box. *Ehlrich*, No. 252-99, mem. op. at 2. The customs agent noticed that the sealed bottles did not sound right when shaken.[3] *Id.* The agent opened the sealed bottles and conducted a field test for narcotics, which tested positive for cocaine. *Id.* Law enforcement officials eventually determined that the bottles contained over 4000 grams of liquid cocaine. *Id.* Customs officials detained Petitioner and the Pennsylvania State Police then took him into custody. *Id.*

Acting through counsel, Petitioner filed an Omnibus Pretrial Motion on February 11, 2000, in the Court of Common Pleas of Delaware County, challenging, *inter alia*, the seizure of the liquor bottles by customs officials. *Id.* Counsel informed Petitioner that the motion would be filed and provided him with copies. *Id.* On March 9, 2000, Petitioner entered an open guilty plea to one count of possession with intent to deliver a controlled substance in violation of 35 Pa. Cons. Stat. §§ 780-113(a)(16), (30). *Id.* Prior to entering this plea, Petitioner signed a four-page

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County).

[3] In the Affidavit of Probable Cause in support of the Criminal Complaint, the arresting officer also noted that the customs agent stated that the bottles appeared heavier than normal, and that the customs agent could not see through the bottles when they were held up to the light. (Doc. No. 9 Ex. E at unnumbered 3.)

guilty plea statement in which he acknowledged that the plea was knowingly, voluntarily, and intelligently entered. *Id.* at 3. The guilty plea statement also stated that Petitioner agreed to withdraw all pending pretrial motions. *Id.* In the plea colloquy on March 9, Petitioner informed the trial court that he had read and understood the terms of the guilty plea statement and had no question about its contents. *Id.*

Prior to sentencing, Petitioner requested leave to withdraw his guilty plea, which was granted by the trial court on June 6, 2000. *Id.* The trial court also reinstated Petitioner's Omnibus Pretrial Motions and ordered discovery to proceed. *Id.*

Petitioner then entered into a negotiated plea of guilty with the Commonwealth. *Id.* Petitioner agreed to plead guilty to one count of possession of a controlled substance with intent to distribute in exchange for the Commonwealth's recommendation of a sentence of four (4) to eight (8) years' imprisonment.[4] *Id.*; N.T. 7/28/00 at 15. Petitioner again signed and initialed a four-page guilty plea statement and a two-page post-sentencing rights form acknowledging the waiver of his rights, including the withdrawal of all pending pretrial motions. *Ehlrich*, mem. op. at 3. During the guilty plea colloquy on July 28, 2000, Petitioner stated that he entered into the plea agreement knowingly, voluntarily, and intelligently, and that he had read all the plea documents and understood them. *Id.*; N.T. 7/28/00 at 16-20. The trial court accepted the guilty plea and sentenced Petitioner to the negotiated four (4) to eight (8) years' incarceration. N.T. 7/28/00 at 19, 22.

B. PCRA Proceedings

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[4] If Petitioner was found guilty after a trial, he faced a mandatory minimum sentence of not less than seven (7) nor more than fourteen (14) years' imprisonment and a $50,000 fine. *Ehlrich*, mem. op. at 4; N.T. 7/28/00 at 5-8.

On March 6, 2001, Petitioner filed a pro se petition pursuant to Pennsylvania's Post Conviction Relief Act, 42 Pa. Cons. Stat. §§ 9541-9546. *Ehlrich*, No. 252-99, mem. op. at 4. Counsel was appointed to represent petitioner. *Id.* After reviewing the record, counsel determined that there was no merit to Petitioner's claims and filed a "no-merit letter" pursuant to *Commonwealth v. Finley*, 550 A.3d 213 (Pa. Super. Ct. 1998). *Id.*

On May 18, 2001, another attorney was appointed to represent Petitioner. At a hearing on June 22, 2001, counsel for Petitioner submitted an amended PCRA petition, alleging that his trial counsel was ineffective for advising Petitioner to enter a guilty plea, for withdrawing his Omnibus Pretrial Motion, and for failing to raise the issue of lack of subject-matter jurisdiction. *Id.* at 4-5; PCRA Hr'g Tr. 6/22/01 at 4-6, 17-20. After evidentiary hearings on June 22, 2001, and July 25, 2001, the PCRA court by Order dated December 6, 2001, denied Petitioner's claims. An opinion was filed on April 30, 2002. *Ehlrich*, No. 252-99, mem. op. at 4.

Petitioner then filed an appeal with the Pennsylvania Superior Court, alleging that his counsel was ineffective for advising Petitioner to plead guilty and failing to raise the issue of lack of subject-matter jurisdiction. (Doc. No. 10 Ex. I at 12-19.) Specifically, Petitioner argued that because the seizure occurred at a federal customs facility in the Philadelphia International Airport, the state court lacked jurisdiction under state law, and that trial counsel should have filed a motion to dismiss on these grounds. (*Id.* at 13-15.) In addition, Petitioner asserted that his counsel failed to inform him that his Omnibus Pretrial Motion challenging the validity of the seizure would be withdrawn if he pled guilty, and, as a result, his guilty plea was not made knowingly, intelligently, or voluntarily. (*Id.* at 16-18.) On October 21, 2002, the Superior Court rejected Petitioner's claims and affirmed the PCRA court's denial of the petition.

Commonwealth v. Ehrlich, 815 A.2d 1125 (Pa. Super. Ct. 2002) (table), No. 244 EDA 2002, mem. op. at 1. Petitioner filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court, which was denied on May 28, 2003. *Commonwealth v. Ehrlich*, 823 A.2d 143 (Pa. 2003) (table).

C. Federal Habeas Petition

On April 21, 2004, Petitioner filed the instant Petitioner for writ of habeas corpus, alleging that: (1) the state court lacked subject-matter jurisdiction; (2) trial counsel was ineffective for failing to raise the issue of subject-matter jurisdiction with the state court; (3) the customs agent's search and seizure of the liquor bottles were unconstitutional; and (4) trial counsel was ineffective for advising Petitioner that a suppression hearing would be fruitless and for advising him to enter a guilty plea. (Doc. No. 1 ¶¶ 12(A)-(C).) The Petition was referred to Magistrate Judge Diane M. Welsh for a Report and Recommendation. On August 25, 2004, Magistrate Judge Welsh recommended that the Petition be denied on the merits because: (1) the state court determined that it had jurisdiction in the matter, and that decision was a matter of state law not reviewable by a federal court in a habeas petition; (2) the state court's determination that the customs agent's seizure of the liquor bottle was constitutional was not contrary to, or an unreasonable application of, clearly established Supreme Court precedent; and (3) because these underlying claims were not meritorious, Petitioner's trial counsel was not ineffective for failing to raise them or advise Petitioner not to accept a guilty plea. (Doc. No. 10 at 2-7.) Petitioner timely objected to the Report and Recommendation and requested that this Court reconsider all claims presented in the Petition. (Doc. No. 11.)

II. STANDARD OF REVIEW

The Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), requires courts to employ a deferential, "reasonableness" standard of review to a state court's judgment on constitutional issues raised in habeas petitions. *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 903 (3d Cir. 1999); *see also Lindh v. Murphy*, 521 U.S. 320, 334 n.7 (1997) (describing AEDPA's standard of review as "highly deferential" to state court determinations). A federal court may overturn a state court's resolution on the merits of a constitutional issue only if the state court decision "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1) (2000). The Supreme Court has adopted a two-part standard for analyzing claims under § 2254(d)(1), establishing that the "contrary to" and "unreasonable application of" clauses have independent meaning:

> Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "[A] federal habeas court may not issue the writ [of habeas corpus] simply because the court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Id.* at 411.

This Court must also apply a deferential standard to a state court's determination of facts. A state court's determination of a factual issue is "presumed to be correct," and may be rebutted only by "clear and convincing evidence" to the contrary. 28 U.S.C. § 2254(e)(1) (2000). Habeas

relief predicated on an alleged factual error will be granted only if the state court decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *Id.* § 2254(d)(2).

We review *de novo* those portions of the Magistrate Judge's Report and Recommendation to which specific objections have been made. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *see also Thomas v. Arn*, 474 U.S. 140, 141-42 (1985) ("[A] United States district judge may refer . . . petitions for writ of habeas corpus[] to a magistrate, who shall conduct appropriate proceedings and recommend dispositions. . . . [A]ny party that disagrees with the magistrate's recommendations 'may serve and file written objections' to the magistrate's report, and thus obtain *de novo* review by the district judge." (citations and footnotes omitted)).

III. DISCUSSION

A. State Court Jurisdiction

Petitioner first asserts that the state court lacked subject-matter jurisdiction over his prosecution and that his counsel was ineffective for failing to raise this issue prior to his guilty plea. Specifically, Petitioner claims that he never left the customs facilities at Philadelphia International Airport, that the federal government has exclusive jurisdiction over customs facilities, and that the state court lacked jurisdiction over his narcotics offense pursuant to state law. (Doc. Nos. 1 ¶¶ 12(A)-(B), 11 at unnumbered 1-4.) Petitioner relies on a state statute, 74 Pa. Cons. Stat. § 1, which states that "[t]he jurisdiction of this State is hereby ceded to the United States of America over all such pieces or parcels of land . . . within the limits of this State, as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post offices, customs houses or other structures, exclusively owned by the general

government and used for its purposes . . . ." (Doc. No. 11 at unnumbered 1.) This claim was raised in Petitioner's PCRA proceedings and is exhausted.

Pursuant to the federal habeas statute, 28 U.S.C. § 2254(a), we may grant "an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court *only* on the ground that he is in custody *in violation of the Constitution or laws or treaties of the United States*." 28 U.S.C. § 2254(a) (2000) (emphases added). Issues involving violations of state law alone are not subject to federal habeas corpus relief. *See, e.g.*, *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("[W]e reemphasize that it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States."); *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990) ("[F]ederal habeas corpus relief does not lie for errors of state law . . . ."); *see also Gilmore v. Taylor*, 508 U.S. 333, 348-49 (1993) (O'Connor, J., concurring) ("[A] mere error of state law, one that does not rise to the level of a constitutional violation, may not be corrected on federal habeas."). Thus, "[a] federal habeas court lacks authority to review a state court's determination that it has jurisdiction based on state law," and "[a] state court's determination of jurisdiction based on that state's law is binding on a federal court."[5] *Lambert v. Blackwell*, No. 01-CV-5125, 2003 U.S. Dist. LEXIS 5125, at *62 n.21 (E.D. Pa. Apr. 1, 2003), *aff'd*, 387 F.3d 210 (3d Cir. 2004), *petition for cert. filed*, No. 04-8536 (Feb. 3, 2005); *see also Wright v. Angelone*, 151 F.3d 151,

[5] We note that the United States Supreme Court has stated that "there is nothing in the clauses of the Fourteenth Amendment guaranteeing due process and equal protection which converts an issue respecting the jurisdiction of a state court under the constitution and statutes of the State into anything other than a question of state law." *Gasquet v. Lapeyre*, 242 U.S. 367, 369 (1917).

158 (4th Cir. 1998) (finding that the state court's determination of its jurisdiction was a matter of state law not reviewable by a federal habeas court); *Poe v. Caspari*, 39 F.3d 204, 207 (8th Cir. 1994) (stating that "jurisdiction is no exception to the general rule that federal courts will not engage in collateral review of state court decisions based on state law"); *Wills v. Egeler*, 532 F.2d 1058, 1059 (6th Cir. 1976) (stating that the "determination of whether a state court is vested with jurisdiction under state law is a function of the state courts, not the federal judiciary").

Here, the state court determined that it had jurisdiction as a matter of state law. Reviewing Petitioner's claim of lack of subject-matter jurisdiction, the PCRA court stated:

> As to Petitioner's first claim, that this Court does not possess subject matter jurisdiction over this incident, this claim is without merit.
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> Petitioner entered the Commonwealth in possession of a large quantity of liquid cocaine. The possession of such a substance is a violation of 35 Pa. [Cons. Stat.] § 780-113(a)(16) & (20). The Pennsylvania Courts of Common Pleas have original jurisdiction over all criminal matters occurring within the Commonwealth of Pennsylvania. The subject matter jurisdiction of a criminal court extends to the offenses committed within the county of trial. . . .
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> In the present case, evidence was presented at the PCRA hearing that a criminal act occurred within the jurisdiction of this Court and the offense was committed within Delaware County. Petitioner, by his own admission, admitted that he arrived in the Commonwealth of Pennsylvania, County of Delaware, Township of Tinicum on February 14th, 2001. He admits that he possessed and carried with him a piece of carry-on luggage. This luggage was a cardboard box containing two bottles. Upon entering the Customs area, the Petitioner's luggage was searched. It was determined that the bottles collectively contained over 4000 grams of liquid cocaine. This course of events presents *prima facie* evidence that a crime has occurred within the borders of the Commonwealth, and is thus sufficient to vest this Court with Subject Matter Jurisdiction. . . .
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> . . .
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> However, Petitioner contends that the Federal Government[,] not the Commonwealth, has exclusive jurisdiction over this matter, since it occurred within a[] U.S. Customs station. Petitioner's assertions are without merit.
>
> First, without discussing the merits of Petitioner's argument as to the United States Customs Station, it is important to note that Petitioner still possessed the contraband in Delaware County, and this fact is by Petitioner's own admission. Second, there is a rebuttable presumption that the state governments

> have concurrent jurisdiction with the Federal Government over all matters.[4]
>
> Petitioner has failed to meet his burden of proof. Petitioner has not demonstrated that the federal government has exclusive jurisdiction over the airport and therefore he has not shown this Court that it lacked Subject Matter Jurisdiction to hear this case. Therefore, this claim must fail.
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> [4] 74 Pa. [Cons. Stat.] §§ 1-120.143 lists the areas in Pennsylvania that have been ceded to the United States and the Philadelphia airport is not one of those areas, which include land "for the purpose of erecting post offices, custom houses or other structures[.]" Again, . . . Petitioner clearly possessed contraband in the airport proper, which has not been ceded to the United States.

Ehlrich, No. 252-99, mem. op. at 5-7 & n.4 (citations and internal quotations omitted). The Pennsylvania Superior Court also rejected this claim, stating that the PCRA court "fully analyze[d] and correctly dispose[d]" of the issue. *Ehrlich*, No. 244 EDA 2002, mem. op. at 2.

The state courts rejected Petitioner's argument that the state was deprived of jurisdiction pursuant to 74 Pa. Cons. Stat. § 1, found that Petitioner possessed controlled substances in a portion of the airport where Pennsylvania had not ceded exclusive jurisdiction to the federal government, and concluded that the state court therefore had jurisdiction over his criminal conduct. Under AEDPA, "a federal court must presume that the factual findings of both state trial and appellate courts are correct, a presumption that can only be overcome on the basis of clear and convincing evidence to the contrary." *Stevens v. Delaware Corr. Ctr.*, 295 F.3d 361, 368 (3d Cir. 2002) (citing 28 U.S.C. § 2254(e)(1)). Petitioner has offered no evidence to rebut the PCRA court's determination that the Commonwealth had not ceded exclusive jurisdiction over the entire airport. We must therefore accept this factual finding as correct. Because the state court determined that it had jurisdiction over Petitioner's offenses as a matter of state law, we may not grant habeas relief on this claim.

Plaintiff also asserts that his trial counsel was ineffective for failing to challenge the trial court's subject-matter jurisdiction. (Doc. No. 1 ¶ 13(B).) Because every criminal defendant has a Sixth Amendment right to the effective assistance of counsel, *see, e.g.*, *Strickland v. Washington*, 466 U.S. 668, 686 (1984), this claim is cognizable on habeas review. However, this claim is without merit because the state courts resolved the underlying claim against Petitioner. The trial court concluded that it had subject-matter jurisdiction over the prosecution of Petitioner's case as a matter of state law, and that the Pennsylvania Superior Court adopted the trial court's reasoning and conclusion. Because federal courts may not reexamine state courts' determinations of state law issues, *Estelle*, 502 U.S. at 67-68, we must accept the state courts' conclusion that it had jurisdiction over Petitioner's case and that the underlying claim was without merit. Trial counsel cannot be deemed ineffective for failing to raise a meritless claim. *Parrish v. Fulcomer*, 150 F.3d 326, 328 (3d Cir. 1999). Accordingly, we must deny this ineffective assistance of counsel claim as well.

B. Search and Seizure

Petitioner's next claim is that the evidence obtained by customs officials—the liquor bottles containing liquid cocaine—was the fruit of an unconstitutional search and seizure. (Doc. No. 1 ¶ 12(C).) Petitioner asserts that the customs agent lacked a warrant and/or exigent circumstances when he opened the bottles, and that this violated the Fourth Amendment. (Doc. No. 11 at unnumbered 5-6.)

Discussing Petitioner's claim on direct appeal, the Superior Court stated:

> [Petitioner] and his belongings were subjected to a search by United States Customs Agents upon arriving at the Philadelphia International Airport on a flight originating from St. Maarten, a non-United States possessed island located in the

> Caribbean. [Petitioner] concedes that an arrival at a domestic airport on a flight originating in a foreign country subjects a traveler to the same degree of circumspection crossing into the United States at a border. From this starting point, [Petitioner]'s argument is quickly dispelled. [Petitioner] contends that the problem is not with the initial seizure but with the subsequent search. [Petitioner] suggests that, after lawfully seizing the bottles, the customs agents were obligated to obtain a warrant prior to "searching" the bottles. However, [Petitioner]'s position is clearly contrary to the law. The United States Supreme Court succinctly set forth the relevant view on the legality of searches made at the country's borders in *United States v. Ramsey*, 431 U.S. 606, 619 (1977):
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> > Border searches, then, from before the adoption of the Fourth Amendment, have been considered to be "reasonable" by the single fact that the person or item in question had entered into our country from outside. There has never been any additional requirement that the reasonableness of a border search depended on the existence of probable cause. This longstanding recognition that **searches at our borders without probable cause and without a warrant are nonetheless "reasonable"** has a history as old as the Fourth Amendment itself. We reaffirm it now. (emphasis added)
>
> The above quote clearly demonstrates that United States Customs Agents do not need a warrant or probable cause to search a traveler's belongings upon entering the country. The case cited by [Petitioner] to build an argument upon, *United States v. Miller*, 769 F.2d 554 (9th Cir. 1985), is clearly inapposite. *Miller* did not involve an international flight, but rather a flight originating in Florida and ending in California with an intervening stop in Atlanta, Georgia, the place where police first suspected that the defendant was transporting narcotics. Thus, it did not involve a border at all.

Ehrlich, No. 244 EDA 2002, mem. op. at 2-4 (citations and internal quotations omitted).

We conclude that the state court's determination of the validity of the search and seizure was not contrary to, or an unreasonable application of, clearly established federal law as determined by the United States Supreme Court. A border search "is a longstanding, historically recognized exception to the Fourth Amendment's general principle" that a search or seizure may be conducted only with probable cause or a warrant. *United States v. Ramsey*, 431 U.S. 606, 621 (1977). Searches of the passengers and baggage of an international flight at an airport are the

"functional equivalent" of a search at our country's physical border. *Almeida-Sanchez v. United States*, 413 U.S. 266, 272-73 (1973).

At the border, customs officials have the authority "to conduct routine searches and seizures . . ., without probable cause or a warrant, in order to regulate the collection of duties and prevent the introduction of contraband into this country." *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985); *see also United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004) ("'[S]earches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.'" (quoting *Ramsey*, 431 U.S. at 616)). The Supreme Court has repeatedly rejected claims that a routine search of an individual's luggage or sealed possessions violate the Fourth Amendment. *See, e.g.*, *Montoya de Hernandez*, 473 U.S. at 538 (stating that at the border, "[r]outine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant, and first-class mail may be opened without a warrant on less than probable cause"); *Ramsey*, 431 U.S. at 617-23 (holding that searches of sealed envelopes entering the country in international mail are reasonable under the Fourth Amendment); *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 376 (1971) ("A port of entry is not a traveler's home. His right to be let alone neither prevents the search of his luggage nor the seizure of unprotected, but illegal, materials when his possession of them is discovered during such a search."). In the instant case, the brief seizure and search of Petitioner's luggage, including opening and testing the contents of the two liquor bottles, was clearly permissible as part of a routine border search. Thus, the state court's conclusion that the search did not violate the Fourth Amendment was not

contrary to, or an unreasonable application of, clearly established federal law.

Petitioner also alleges that his trial counsel was ineffective for advising Petitioner that his Omnibus Pretrial Motion challenging the validity of the search and seizure of the liquor bottles would be fruitless and advising Petitioner to accept the plea bargain instead of litigating the pretrial motion. (Doc. No. 1 ¶ 12(B).) As discussed, Petitioner's Fourth Amendment rights were not violated by the customs agent's seizure and search of the liquor bottles because these actions were permissible as part of a routine border search. Trial counsel accurately advised Petitioner that a suppression hearing would be fruitless, and counsel cannot be deemed ineffective for recommending that his client not pursue a meritless claim. *Parrish,* 150 F.3d at 328.

An appropriate Order follows.

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

STEPHEN LEWIS EHRLICH	:	
	:	CIVIL ACTION
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, et al.	:	NO. 04-CV-1719
	:	

ORDER

AND NOW, this 9th day of May, 2005, upon consideration of Petitioner's Petition for Writ of Habeas Corpus by a Person in State Custody (Doc. No. 1), Magistrate Judge Diane M. Welsh's Report and Recommendation recommending denial of the Petition (Doc. No. 10), and Petitioner's objections to the Report and Recommendation (Doc. No. 11), it is hereby ORDERED that:

1. Petitioner's objections to the Report and Recommendation are OVERRULED;
2. The Report and Recommendation is APPROVED and ADOPTED;
3. The Petition is DISMISSED; and
4. There is no basis for the issuance of a Certificate of Appealability.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge