Neathery v. Rader et al Doc. 13

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JOSEPH NEATHERY (#333584) CIVIL ACTION

VERSUS

STEVE RADER, ET AL. NO.: 13-00658-BAJ-RLB

RULING AND ORDER

Before the Court is Joseph Neathery's **Petition for Writ of Habeas Corpus (Doc. 1)**. The Magistrate Judge issued a **Report and Recommendation (Doc. 10)**, recommending that the Court dismiss Petitioner's application for habeas corpus relief with prejudice as lacking merit, and that "in the event that the petitioner seeks to pursue an appeal, a certificate of appealability be denied." (Doc. 10 at p. 13).

The Report and Recommendation specifically notified Petitioner that, pursuant to 28 U.S.C. § 636(b)(1), he had fourteen (14) days from the date he received the Report and Recommendation to file written objections to the proposed findings of fact, conclusions of law, and recommendations therein. (Doc. 1 at p. 1). Petitioner timely filed objections to the Magistrate Judge's Report and Recommendation. (Doc. 11).[1]

[1] Petitioner offers two targeted objections to the Magistrate Judge's Report and Recommendation: (1) that the sentence levied on June 27, 2011—which ordered that the sentences imposed on the individual counts for which Petitioner was charged run consecutively and not concurrently—did not violate his right to be free from Double Jeopardy; and (2) that Petitioner right to Due Process was not violated when the State filed a multiple offender bill of information against him the day before his release from prison. As to Petitioner's first objection, the Magistrate Judge found that "any potential error by the trial court on June 27, 2011 in ordering that the sentences be served consecutively was corrected on November 7, 2011," when the trial court vacated the sentences imposed on June 27, 2011, and resentenced Petitioner, with the sentences to run concurrently with each other, with credit for time served." (Doc. 10 at pp. 7 – 8). Accordingly, Petitioner's first objection is without merit. Likewise, the Court finds that Petitioner's due process objection fails as a matter of law for the reasons already

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Having carefully considered the **Petition for Writ of Habeas Corpus (Doc. 1)** and related filings, the Court **APPROVES** the Magistrate Judge's Report and Recommendation (Doc. 10) and **ADOPTS** it as the Court's opinion in this matter.

Accordingly, and for the reasons explained in the Magistrate Judge's Report and Recommendation,

IT IS ORDERED that the **Petition for Writ of Habeas Corpus (Doc. 1)** is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** because Petitioner has failed to "ma[ke] a substantial showing of the denial of a constitutional right" in accordance with 28 U.S.C. § 2253(c)(2).

Baton Rouge, Louisiana, this 23rd day of February, 2017.

BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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stated by the Magistrate Judge, namely, the absence of a showing of prejudice. Although the Court is troubled by the manner in which the State handled Petitioner's case, the Court is not in a position to find that the State's delayed action in finalizing Petitioner's status as a multiple offender and seeking enhanced sentences accordingly was violative of Petitioner's constitutional rights.