

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

EON SHEPHERD,

Petitioner,

-against-

9:17-CV-0548 (LEK)

COMMISSIONER ANNUCCI,

Respondent.

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**ORDER**

On April 10, 2017, petitioner Eon Shepherd filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges a prison disciplinary hearing resulting in a sentence of “thirty days . . . confinement” imposed on February 27, 2015. Dkt. No. 1 (“Petition”) at 1.

In a Decision and Order filed on July 17, 2017, the Court noted that this action should have been commenced pursuant to 42 U.S.C. § 1983 “because the challenged disciplinary sentence does not impact the overall length of the Petitioner’s confinement on his state court criminal conviction.” Dkt. No. 7 (“July 2017 Order”) at 1–2. The Court directed Petitioner to submit a written response “either (1) consenting to the recharacterization of his Petition as a complaint under 42 U.S.C. § 1983, or (2) demonstrating why he properly filed the present action as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254,” such that recharacterizing it as a complaint under § 1983 was unwarranted. Id. at 2. The Court further directed that, if Petitioner consented or “d[id] not file a response” by August 21, 2017, he “shall submit an amended compl[ai]nt under 42 U.S.C. § 1983” by the same date. Id. at 3.

Petitioner did not file a response or an amended § 1983 complaint. Docket. On January 9,

2018, the Court afforded Petitioner a final extension of thirty days to file an amended complaint pursuant to § 1983. Dkt. No. 8 (“January 2018 Order”) at 2. The Court cautioned Petitioner that, if he failed to do so, this action would be dismissed. Id.

To date, Petitioner has filed no response to the Court’s July 2017 Order and has not filed an amended complaint. In accordance with the Court’s January 2018 Order, this action is dismissed.

Accordingly, it is hereby:

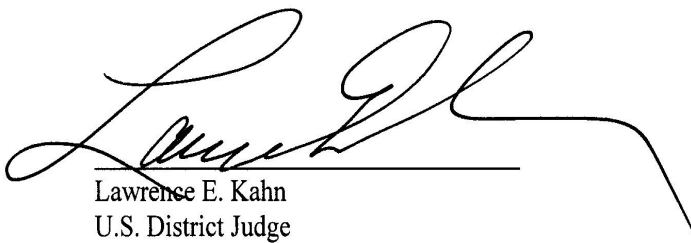
**ORDERED**, that, due to Petitioner’s failure to comply with the Court’s July 2017 Order (Dkt. No. 7) and January 2018 Order (Dkt. No. 8), the Petition (Dkt. No. 1) is **DISMISSED**; and it is further

**ORDERED**, that no certificate of appealability (“COA”) shall issue in this case because Petitioner has failed to make a “substantial showing of the denial of a constitutional right” pursuant to 28 U.S.C. § 2253(c)(2);<sup>1</sup> and it is further

**ORDERED**, that the Clerk serve a copy of this Order upon Petitioner in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: March 22, 2018  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge

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<sup>1</sup> See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (“§ 2253 permits the issuance of a COA only where a petitioner has made a ‘substantial showing of the denial of a constitutional right’”).