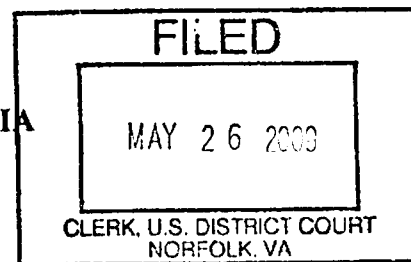


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



VAN PRINCE WELCH, # 215755

Petitioner,

v.

ACTION NO. 2:08CV320

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's revocation of parole on November 18, 1998, his subsequent reincarceration, and the reinstatement of time previously credited for good conduct.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed March 4, 2009, recommends dismissal of the petition. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On March 10, 2009 and March 31, 2009, the Court received Petitioner's objections to the Report and Recommendation.¹

¹ On March 10, 2009, Petitioner submitted his Objection to Report and Recommendation [Doc. 11]. Pursuant to a court order that directed the transfer of Petitioner's legal papers to his new prison address and granted Petitioner an extended period in which to respond to the Report and Recommendation, Petitioner filed a Supplemental Opposition to Report and Recommendation [Doc. 14] and Continued Supplemental Objections to Report and Recommendation [Doc. 15] on March 31, 2009.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed March 4, 2009. Contrary to Petitioner's contention, the Magistrate Judge's recommendation of dismissal was not based on the violation of the statute of limitations, as the discussion of the statute of limitations was limited to footnote 1. Instead, the Magistrate Judge recommended that the petition be dismissed as "a second or successive habeas corpus application." Thus, Petitioner's discussion of equitable tolling is not relevant to the Report's central ground for dismissal.

Also, Petitioner has filed a Motion for Injunctive Relief. [Doc. 18.] Petitioner incorrectly asserts that the Magistrate Judge's Order of March 5, 2009 granted injunctive relief. Rather, the Court directed the Office of the Attorney General to *request* the Virginia Department of Corrections to transfer Petitioner's papers. [Doc. 10.] Moreover, Petitioner admits that "Respondent, by counsel (Attorney General) complied with the Court's Order." [Doc. 18, at 2.] When Petitioner was later deprived of his papers en route to the Pocahontas State Correctional Center, on April 3, 2009, the deprivation did not constitute a violation of the Court Order of March 5, 2009. Instead, Petitioner must file a civil action under 42 U.S.C. § 1983 to seek injunctive relief, because the issue does not pertain to the conviction or sentencing underlying the present habeas claim. Accordingly, the Court **ORDERS** that Petitioner's Motion for Injunctive Relief be **DENIED**.

It is, therefore, **ORDERED** that the habeas petition be **DENIED** and **DISMISSED**. It is further **ORDERED** that judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional

right;" therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.



Terry Coke Morgan, Jr.
Senior United States District Judge

UNITED STATES DISTRICT JUDGE 

Norfolk, Virginia
May 26 2009