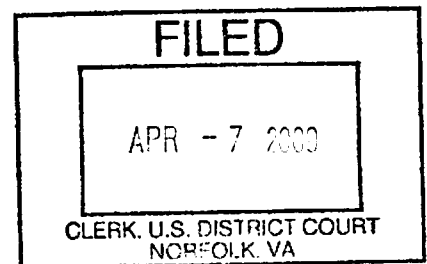


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



DEVINCHE J. ALBRITTON, #317524,

Petitioner,

v.

ACTION NO. 2:08cv443

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 conviction on February 26, 2002, in the Circuit Court of the City of Virginia Beach, Virginia, of possession of cocaine with intent to distribute, as a result of which he was sentenced to serve a total of six (6) years in prison, five (5) years and three (3) months suspended. Petitioner is currently confined by the Virginia Department of Corrections on other charges.

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), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on March 12, 2009 recommending


dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On March 16, 2009, the Court received Petitioner's motion for extension of time to file a response to the motion to dismiss. On March 17, 2009, the Court received Petitioner's objections to the report and recommendation. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the magistrate judge's report, 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 of the United States Magistrate Judge filed on March 12, 2009, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as the claims are barred by the statute of limitations. Additionally, Petitioner's motion for extension of time to file a response to the motion to dismiss is DENIED because Petitioner does not raise grounds that would alter the Court's determination that the petition was filed grossly outside the statute of limitations period. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner 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 thirty (30) days from the date of

entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

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

  
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/s/  
Jerome B. Friedman  
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 7, 2009