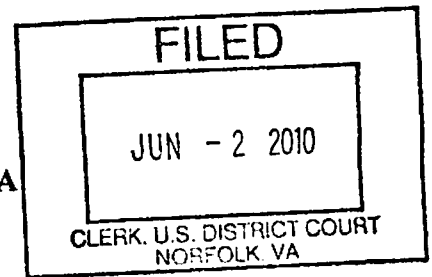


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CURTIS L. WINN, #183765, 1038104

Petitioner,

v.

ACTION NO. 2:09cv510

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 contends that the Virginia Parole Board and Department of Corrections violated Petitioner's due process rights when they wrongfully enhanced his term of incarceration by reactivating previously completed sentences.

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 a report and recommendation. The Report and Recommendation filed April 29, 2010, 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 May 11, 2010, the Court received Petitioner's Objections to the Report and Recommendation.

First, Petitioner objects to the Magistrate Judge's recommendation to grant the respondent's Motion to Dismiss the Petition. Since Petitioner raises no substantive claim in this conclusory objection, the Court finds no merit to the objection.

Second, Petitioner objects to the Report and Recommendation's analysis that Petitioner did

not address the additional sentences imposed upon him for his multiple parole violations. Despite re-asserting his claims that his sentences were completed, the Court finds, that indeed, Petitioner utterly failed to address the fact that he was sentenced to additional prison time for violating parole. As such, the Court finds no merit to the objection.

Third, the Court finds the Report and Recommendation's analysis that Petitioner failed to meet his burden, is not overcome by the statement, "the legal update clearly show petitioner's 'sentences' were completed on certain dates by DOC." (Obj. to R&R at 3.) As such, the Court finds no merit to the objection.

Fourth, Petitioner objects to the Department of Corrections' policy concerning issuance of sentence start date reports, and the procedure for crediting consecutive sentences. Even though this issue was neither raised before the State Supreme Court, nor in the original petition, the Court finds the argument to be without legal merit or factual support.

Fifth, the Court declines to address Petitioner's admonishment to "explain" how his sentence is calculated with respect to the Virginia parole eligibility system. (Obj. to R&R at 5.) The Court finds the rationale put forth by the Respondent, and recommended by the Magistrate Judge, to be correct and in accordance with the safeguards of federal law.

Sixth, this Court declines to respond to Petitioner's inquiry as to the calculation of prisoner good time. The Court finds the rationale put forth by the Respondent, and recommended by the Magistrate Judge, to be correct and in accordance with the safeguards of federal law.

Seventh, the Court declines to respond to Petitioner's inquiry as to the ethical decision of Judge Miller in denying Petitioner's request for an evidentiary hearing.

Eighth, the Court DENIES Petitioner's motion for an evidentiary hearing. As stated in the

Court's Order [Doc. No. 7], an evidentiary hearing is not necessary for the resolution of the issues presented in this petition.

Ninth, the Court finds Petitioner's argument regarding Virginia "old law" and "new law," with respect to parole, unpersuasive. While Petitioner points out the distinction in the calculation under Virginia's altered system, he fails to recognize that parole is a matter of statutory grace, and not constitutionally required. *See Jones v. Rivers*, 338 F.2d 862, 874 (4th Cir. 1964); *see also Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 7 (1979). As such, the Court finds Petitioner's argument meritless, and insufficient to meet the standard required by 28 U.S.C. § 2254(d)(1).

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 April 29, 2010. It is, therefore, ORDERED that the 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.



Robert G. Doumar
Senior United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

~~May~~
June 1, 2010