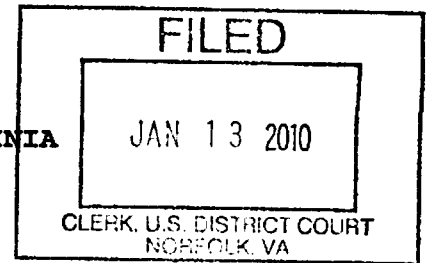


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



KELVIN GOULD, #0009214

Petitioner,

v.

2:09CV571

CITY OF NEWPORT NEWS,
ATTORNEY JEFFREY COLE ROUNTREE,
ATTORNEY TYONE C. JOHNSON,
and
ARTISHA K. TODD, Assistant
Commonwealth's Attorney,

Respondents.

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 continued incarceration on charges of inanimate object sexual penetration and knowingly and intentionally exposing his sexual or genital parts. The charges have been pending since January 30, 2007.

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 Magistrate Judge filed his report recommending dismissal of the petition on December 16, 2009. By copy of the report, petitioner was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge.¹ The Court received from petitioner on December 22,

¹ Since petitioner's claims are not exhausted, the respondents were not required to answer the petition.

2009, a document entitled "Affidavit," which is construed to be objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner 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. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis of petitioner's failure to exhaust his available state court remedies.


To the extent that petitioner objects to the Magistrate Judge's findings and conclusions, the objections are without merit. On November 26, 2007, petitioner filed a petition for writ of habeas corpus in this Court. The petition was dismissed because petitioner's case in the Newport News Circuit Court was pending, and therefore, his claims were not ripe for adjudication by a federal court.

On November 12, 2009, petitioner filed the instant petition. However, the charges against petitioner in the Newport News Circuit Court are still pending, but the matter is set for trial on February 10, 2010. Between November, 2007, and November, 2009, no relief was sought in the state courts. Instead, petitioner has, once again, sought federal relief. The Magistrate Judge appropriately recommended dismissal of the petition because the issues raised therein are still not ripe for adjudication. Until the Commonwealth of Virginia has tried petitioner or until petitioner has exhausted his state court remedies, this Court is unable to act.

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 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, 336 (U.S. 2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

_____/s/ 
JEROME B. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 13, 2010