

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

WILLIE COLEY, # 1041033	:	
	:	
Petitioner,	:	
v.	:	USDC CIVIL ACTION NO. 2:14CV120
HAROLD CLARKE,	:	USCA CASE NO. 15-6135
Director, Virginia Department	:	
of Corrections,	:	
	:	
Defendant.	:	

**ORDER**

This case was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 submitted by Petitioner Willie Coley (“Mr. Coley” or “Petitioner”), which was denied and dismissed by Final Order on December 17, 2014. On January 23, 2015 the Court received and filed Mr. Coley’s Notice of Appeal. Mr. Coley maintains that he delivered the Notice of Appeal and a Motion for Certificate of Appealability to the prison mailroom within the 30-day period for appeal. By unpublished Opinion dated July 9, 2015 the United States Court of Appeals for the Fourth Circuit remanded this case for the limited purpose of allowing this Court to make factual findings as to the date Petitioner delivered his Notice of Appeal to prison officials for filing.

The matter was referred to a United States Magistrate Judge, who directed the parties to submit additional evidence to demonstrate the date Mr. Coley delivered the Notice of Appeal to prison mailing officials. The Magistrate Judge received exhibits and memoranda from the parties and thereafter filed a Report and Recommendation (ECF No. 33) on September 1, 2015 recommending that this Court supplement the record with the factual findings set out below.

The parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. On September 16, 2015, the Court received and filed Mr. Coley's Objections (ECF No. 34) to the Report and Recommendation. The Respondent did not file any objections and the time for filing has now expired.

After reviewing the Report and Recommendation, the record, and Mr. Coley's Objections, this Court ADOPTS the findings and recommendations set forth in the Magistrate Judge's Report and Recommendation filed September 1, 2015 and makes the following findings of fact:

### **FINDINGS OF FACT**

Mr. Coley is incarcerated at the Lawrenceville Correctional Center in Lawrenceville, Virginia. Lawrenceville Correctional Center maintains a system for monitoring and cataloging outgoing legal mail. Inmates place mail in their housing units' prison mailbox, and the mail is then brought to the mail room. Mail room personnel log legal mail into a logbook and take the mail to the post office on the day that the mail room receives the mail.

On January 16, 2015, Mr. Coley dated and mailed his Notice of Appeal using the prison mail system. Mr. Coley's later testimony that he mailed the Notice of Appeal and Motion for Certificate for Appealability on January 15, 2015 is the only evidence of an earlier mailing date, but it is contradicted by the sworn testimony of the prison mail room official, and significantly, by multiple statements made by Mr. Coley himself.

Unchallenged testimony establishes that due to the federal holiday on Monday, January 19, 2015 – Dr. Martin Luther King, Jr., Day – Mr. Coley could have placed his legal mail in his housing unit mailbox any time from Friday, January 16, 2015 through Monday, January 19, 2015, resulting in

a logbook entry of Tuesday, January 20, 2015. This is consistent with Mr. Coley's certification – provided in three places – that he mailed the document on January 16, 2015.

This Court ADOPTS the findings and recommendations set forth in the Magistrate Judge's Report and Recommendation (ECF No. 33). It is ORDERED that the record be supplemented with the factual findings set forth above and returned to the United States Court of Appeals for the Fourth Circuit for further consideration in connection with Mr. Coley's pending proceedings in that court.

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



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Arenda L. Wright Allen  
United States District Judge

Norfolk, Virginia

Oct 8, 2015