

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

VALERIE K. SMITH, #1080429,

Petitioner,

v.

ACTION NO. 2:15cv428

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Valerie K. Smith ("Smith"), a Virginia inmate, submitted a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. ECF No. 17. The petition alleges violations of federal rights pertaining to Smith's convictions in the Circuit Court for the City of Newport News for robbery (three counts), armed burglary (one count), and use of a firearm in the commission of a felony (three counts). As a result of these convictions, Smith was sentenced, on October 17, 2001, to serve a 43-year active term of incarceration.

The matter was referred to the 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 December 19, 2016, recommends that Respondent's motion to dismiss, ECF No. 23, be granted, and the petition for a writ of habeas corpus, ECF No. 17, be denied and dismissed with prejudice. ECF No. 29. Each party was advised of the right to file objections to the findings and recommendations made by the Magistrate Judge. On January 27, 2017, the Court received Smith's objections to the report and recommendation. ECF No. 32.

The Court, having reviewed the record and examined the objections filed by Smith 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 December 19, 2016.

In Smith's objections, she restates substantially the same arguments she raised in her petition regarding why she should be entitled to equitable tolling of the statute of limitations: namely, that a lack of resources and deficient understanding of the law, and limited access to the prison law library, hampered her ability to file a timely petition, and that she did not obtain a police report and a disposition of charges record-documents pertinent to her claims of ineffective assistance of counsel and prosecutorial misconduct—until years after her

conviction became final, despite some efforts to do so. These arguments were adequately addressed by the Magistrate Judge's report and recommendation.

The Court, therefore, **ORDERS** that Respondent's motion to dismiss, ECF No. 23, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 17, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that Judgment be entered in favor of Respondent.

Smith has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, 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*, 537 U.S. 322, 335-36 (2003).

Smith is hereby notified that she may appeal from the Judgment entered pursuant to this Final Order by filing a 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.

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

/s/ msd

Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 10, 2017