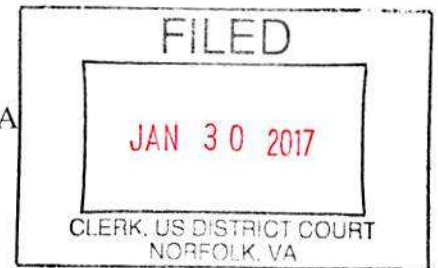


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CHRISTIAN EUGENE ROBBINS,

Petitioner,

v.

ACTION NO. 2:15cv542

HAROLD W. CLARKE,
Director, Virginia Dept. of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, through his attorney submitted a petition pursuant to 28 U.S.C. § 2254. ECF No. 1. The Petition alleges violations of federal rights pertaining to Petitioner's conviction in the Circuit Court for the City of Virginia Beach for Driving Under the Influence, second offense within less than five years after the first offense. As a result of the conviction, Petitioner was sentenced on February 12, 2013, to serve twenty days in jail and a suspended sentence of 345 days. This sentence expired no later than February 2014, well before the Petition was filed on December 14, 2015.

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 Report and Recommendation filed December 1, 2016, recommends dismissal of the petition. ECF No. 16. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. On December 15, 2016, the Court received Petitioner's objections to the Report and Recommendation. ECF No. 17.

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, ADOPTS and approves the findings and recommendations set forth in the Report and Recommendation filed December 1, 2016. A review of Petitioner's objections reveals a fundamental disagreement with the sound reasoning presented in the Report and Recommendation regarding Petitioner's "out of custody" status. The Report and Recommendation acknowledged that reliance upon the use of habeas corpus petitions in the United States is not restricted to situations only in which a petitioner is in physical custody. ECF 16 at 5, citing *Jones v. Cunningham*, 371 U.S. 236, 239 (1963). The Report and Recommendation reaches the sound conclusion, however, that a purported petitioner is not in custody when the purported petitioner's challenged sentence has expired at the time that the purported petition is filed. *Id.*, citing *Maleng v. Cook*, 490 U.S. 488, 491 (1989). Petitioner's continued assertions that this analysis is compromised by theories regarding the potential for revocation if he failed to pay fines is unpersuasive. Likewise, after *de novo* review, Petitioner's other objections are found to be without merit. The Report and Recommendation is well-reasoned and adopted in its entirety.


Therefore, the petition is **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," and this 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).

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.

CONCLUSION

For the reasons stated herein and presented comprehensively in the Report and Recommendation, Petitioner's objections (ECF No. 17) are **OVERRULED**. The Report and Recommendation (ECF No. 16) is **ADOPTED**, and the Respondent's Motion to Dismiss (ECF No. 5) is **GRANTED**. The Magistrate Judge's rulings that Petitioner's Motion for Leave to Amend Petition (ECF No. 9) and "Motion (Unopposed) to Amend Previously Filed (April 18, 2016) 'Motion for Leave to Amend Petition and Memorandum [sic] In Support Thereof'" (ECF No. 13) are **DENIED** because the amendments proposed in both motions are futile are noted with approval. The Petition (ECF No. 1) is **DENIED and DISMISSED WITH PREJUDICE**.

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



Arenda L. Wright Allen
United States District Judge

Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
January 27, 2017