

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

KANE ANTHONY FOSNAUGHT,

Petitioner,

v.

ACTION NO. 2:16cv115

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

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. In his Petition, the pro se Petitioner alleges violations of his constitutional rights in relation to his convictions for Conspiracy, Malicious Wounding, Robbery, Attempted Robbery, and three counts of the Use of a Firearm in the Commission of a Felony. On August 19, 2013, in the Circuit Court for the City of Virginia Beach, the Petitioner was sentenced to thirty-two (32) years with seventeen years (17) suspended, resulting in an active total sentence of fifteen (15) years incarceration in the Virginia state penitentiary.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern

District of Virginia. The Magistrate Judge's Report and Recommendation filed December 9, 2016, recommends dismissal of the Petition with prejudice. On December 29, 2016, the Petitioner timely filed objections to the Report and Recommendation. The Respondent has not responded to the Petitioner's objections and the time to do so has expired.

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 December 9, 2016. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 12, is **GRANTED**, and that the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of the Respondent.

On December 29, 2016, the Petitioner also filed a Motion for Discovery, ECF No. 17, but he failed to make a sufficient showing to establish the need for discovery. See Bracy v. Gramley, 520 U.S. 899 (1997) (reasoning, based on Rule 6(a) of the Rules Governing § 2254 Cases, that a petitioner must show "good cause" or a sufficient showing of the likelihood of merit to his claim for a motion for discovery to be granted in a

§ 2254 case). Therefore, Petitioner's Motion, ECF No. 17, is **DENIED.**

The 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 (30) days from the date of entry of such judgment.

The Petitioner 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).

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

It is so **ORDERED.**

RS

Rebecca Beach Smith

RS Chief Judge

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 19, 2017