

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

CHARLES EDWARD GARY, #1002003,

Petitioner,

v.

ACTION NO. 2:16cv283

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

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. The petition alleges violations of federal rights pertaining to Charles Edward Gary's convictions in the Circuit Court for the City of Danville on November 13, 2014 for felony shoplifting, felony eluding the police, driving under the influence of alcohol, and driving while the privilege to drive was suspended. ECF No. 1 at 11. Gary was sentenced to 11 years and 3 months in prison, with 7 years, 2 months, and 20 days suspended, 3 years of supervised probation, and 10 years of good behavior. *Id.*

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 May 24, 2017, recommends that respondent's motion to dismiss, ECF No. 15, be granted, the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed with prejudice, and Gary's motion to grant his petition for

writ of habeas corpus, ECF No. 21, be denied. ECF No. 30. Each party was advised of the right to file objections to the findings and recommendations made by the Magistrate Judge. On June 14, 2017, the Court received Gary's objections to the report and recommendation. ECF No. 31.

The Court, having reviewed the record and examined the objections filed by Gary 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 May 24, 2017. Gary's objections restate substantially the same arguments he raised in his petition. His arguments were adequately addressed by the Magistrate Judge's report and recommendation.

The Court, therefore, ORDERS that respondent's motion to dismiss, ECF No. 15, is GRANTED, and the petition for a writ of habeas corpus, ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE. The Court further ORDERS that Gary's motion to grant his writ of habeas corpus, ECF No. 21, is DENIED.

Gary 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).

Gary is hereby notified that he 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 Gary and to counsel of record for respondent.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
June 21, 2017