

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

TRACY CALVIN DUNLAP JR., #20701-057

FILED
AUG - 8 2017
CLERK, US DISTRICT COURT NORFOLK, VA

Petitioner,

v.

Civil Action No.: 2:16cv349

ERIC D. WILSON, Warden

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2241, ECF No. 1. In his Petition, the pro se Petitioner seeks judicial review by this court to stop the Bureau of Prisons from collecting funds from Petitioner's account to pay his restitution ordered by the sentencing court.

On October 18, 2016, the Respondent filed a Motion to Dismiss the Petition, ECF No. 5. The Petitioner filed a response on November 14, 2016, ECF No. 9.

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 on June 26, 2017, recommends dismissal of the petition. ECF No. 13. Each party was advised of

his right to file written objections to the findings and recommendations made by the Magistrate Judge. On July 17, 2017, the Court received Petitioner's objections to the Report and Recommendation. ECF No. 14.

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, agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Magistrate Judge's Report and Recommendation filed on June 26, 2017, as the Court's own opinion, except that the Court finds it unnecessary to make a finding that the Judgment and Commitment Order is ambiguous as the rule in this circuit is that the oral pronouncement of the sentence controls. See Rakes v. United States, 309 F.2d 686, 687-88 (4th Cir. 1962); United States v. Parris, 639 F. App'x 923, 927 (4th Cir. 2016). In this case, the oral sentence is clear that Petitioner "has a financial obligation" as provided in 28 C.F.R. § 545.11. It is, therefore, **ORDERED** that the Petition, ECF No. 1, be **DENIED** and **DISMISSED** with PREJUDICE and further **ORDERED** that judgment be entered in favor of Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman

United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253 (c) and Federal Rule of Appellate Procedure 22(b) (1), the Court declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

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

It is so ORDERED.

Mark S. Davis
Mark S. Davis
United States District Judge

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: August 8, 2017