

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

MAR - 1 2018

JOSHUA PATERNOSTER-COZART, #0041079,

Petitioner,

v.

ACTION NO. 2:17-cv-148

JIM O'SULLIVAN, Acting Superintendent,
Hampton Roads Regional Jail, *et al.*,

Respondents.

FINAL ORDER

Before the Court is a Petition and Amended Petition for a writ of habeas corpus (ECF Nos. 1 and 6) filed pursuant to 28 U.S.C. § 2254. In his Amended Petition, the Petitioner alleged that his constitutional rights were violated in connection with his November 7, 2016 conviction in the York County General District Court for Shoplifting, Under \$200. ECF No. 6 at 1. Petitioner was sentenced to serve twelve (12) months in prison. *Id.*

The District Court previously dismissed Petitioner's action on the grounds that he failed to exhaust his state remedies. ECF No. 10. Petitioner appealed to the Fourth Circuit, which vacated the Judgment on the grounds that the District Court's disposition by Dismissal Order was "recommended by" the undersigned Magistrate Judge ("the undersigned"), and thus the parties were not given the opportunity to object pursuant to 28 U.S.C. § 636(b)(1)(C). ECF No. 16. Following the issuance of the mandate, the matter was remanded to the District Court, and subsequently re-referred by the District Judge to the undersigned for further proceedings. ECF No. 19.

In a Report and Recommendation entered on February 7, 2018 (ECF No. 21), the Magistrate Judge recommended the petition and amended petition be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. The Petitioner has not filed any objection with the Court.¹

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation (ECF No. 21) in its entirety as the Court's own opinion. Accordingly, the Petition and Amended Petition (ECF Nos. 1 and 6) are **DENIED** and **DISMISSED WITH PREJUDICE**


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).

¹ On January 24, 2018, the Petitioner contacted the Clerk's Office by phone to advise that his address had changed from the address on record (Virginia Peninsula Regional Jail, 9320 Merrimac Trail, Williamsburg, VA 23185) to 428A Pembroke Avenue, Hampton, Virginia 23669. The Petitioner indicated that he would mail a change of address notice to the Court. The Court notes that pursuant to Local Civil Rule 7, the Petitioner is required to provide "an address where notice can be served on such person and a telephone number where such person can be reached or a message left." To date, the Petitioner has not mailed a change of address notice to the Court.

On February 7, 2018, the Clerk's Office mailed a copy of the Report and Recommendation to the Petitioner at the last known address of record (Virginia Peninsula Regional Jail) as well as to the Pembroke Avenue address which was provided by the Petitioner by phone on January 24, 2018. On February 16, 2018 and February 20, 2018, both copies of the Report and Recommendation were returned to the Clerk's Office by the U.S. Postal Service as "Not deliverable as addressed", "attempted not known" and "unable to forward." Therefore, the Court has no current address for the Petitioner.

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner at both addresses the Court has on file and to the Respondent.

It is so **ORDERED**.



Mark S. Davis
United States District Judge

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: *March 1, 2018*