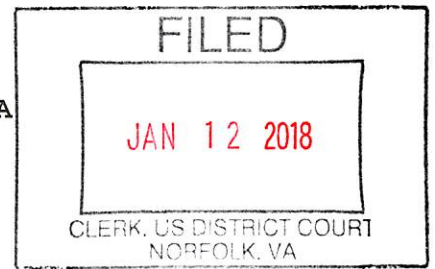


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



RAYMOND FITZGERALD, #1186026

Petitioner,

v.

ACTION NO. 2:17cv337

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

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of Petitioner's constitutional rights pertaining to his convictions on June 9, 2011, in the Richmond Circuit Court for possession of a firearm by a convicted felon, use of a firearm during the commission of a felony, and malicious wounding. As a result of the convictions Petitioner was sentenced to serve a total of 28 years in prison with 16 years suspended, leaving a total time to serve of 12 years.

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 8, 2017, recommends dismissal of the petition without prejudice as a result of unexhausted claims asserting Fitzgerald's

actual innocence. The Report and Recommendation advised Petitioner of his right to object and the time limit for doing so. The Court has received no objections, and the time for filing objections has now expired.

Accordingly, the Court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed December 8, 2017, and it is therefore ORDERED that Respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED without prejudice.

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.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, 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, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/ MSD

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 12, 2018
4:30 p.m.