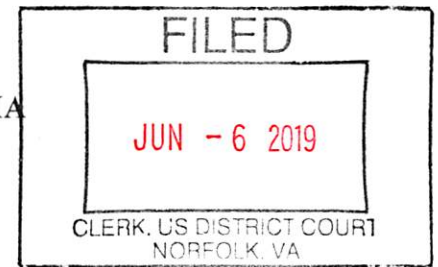


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



MICHAEL S. GORBHEY, #33405-013,

Petitioner,

v.

ACTION NO. 2:18cv110

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

Respondent.

FINAL ORDER

Petitioner Michael S. Gorbey (“Gorbey”), a Virginia inmate, submitted a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. ECF No. 1. Gorbey challenges his misdemeanor possession of marijuana conviction, based on his guilty plea in the General District Court for Hanover County on January 10, 2007. *Id.* at 1. Gorbey was sentenced the same day to time served. *Id.*

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 Local Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed April 23, 2019, recommends that respondent’s motion to dismiss, ECF No. 13, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed with prejudice. ECF No. 19. The report and recommendation further recommended that Gorbey’s request to have his petition construed as a writ of error *coram nobis*, ECF No. 17 at 3, be denied.

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the

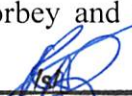
report and recommendation, and the time for filing objections has expired.

The Court, having reviewed the record, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 13, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that Gorbey's request to have his petition construed as a writ of error *coram nobis*, ECF No. 17 at 3, is **DENIED**.

Finding that the basis for dismissal of Gorbey's Section 2254 petition is not debatable, and alternatively finding that Gorbey has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Gorbey is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. If Gorbey intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty days** from the date of this Order. Gorbey may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Final Order to Gorbey and counsel of record for respondent.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
United States District Judge

Norfolk, Virginia
June 5, 2019