

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

DAVID MEYERS, #1039777,

Petitioner,

v.

ACTION NO. 2:20cv627

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

Respondent.

FINAL ORDER

On December 15, 2020, petitioner David Meyers filed a *pro se* action pursuant to 28 U.S.C. § 2254 challenging disciplinary proceedings by the Virginia Department of Corrections in 2020 while he was in custody at Sussex I State Prison, Virginia, which did not result in the loss of good time credits. ECF No. 1. Respondent filed a Rule 5 answer and motion to dismiss, as well as a supporting brief on January 6, 2022. ECF Nos. 32–34. Meyers filed an untimely response to the motion to dismiss on January 31, 2022. ECF No. 37.

This matter was referred to the United States Magistrate Judge 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. On February 2, 2022, the Magistrate Judge prepared a report and recommendation, recommending that respondent's motion to dismiss, ECF No. 33, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed without prejudice. ECF No. 40. Each party was advised of the right to file written objections to the

findings and recommendations made by the Magistrate Judge. *Id.* at 7–8. On February 14, 2022, the Court received Meyers’ objections. ECF No. 41.

The Court, having reviewed the record and examined the objections filed by Meyers to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** in full the findings and recommendations set forth in the Report and Recommendation. The Court, therefore, **ORDERS** that Respondent’s Motion to Dismiss (ECF No. 33) is **GRANTED**, and the Petition for a Writ of Habeas Corpus (ECF No. 1) is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

Finding that the basis for dismissal of Meyers’ section 2254 petition is not debatable, and alternatively finding that Meyers 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).

Meyers 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 Meyers intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Meyers 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.**

