

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**CLEVON S. EDWARDS,**

Petitioner,

v.

Civil Action No. 3:12CV582

**UNITED STATES OF AMERICA,**

Respondent.

**MEMORANDUM OPINION**

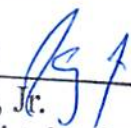
Petitioner, a former Virginia state prisoner proceeding *pro se*, submitted a Notice of Motion to Vacate Conviction and Sentence under 28 U.S.C. § 2241 and a Writ of Audita Querela. Because Petitioner appeared to challenge his conviction and sentence, by Memorandum Order entered September 24, 2013, the Court warned Petitioner that he may only proceed under 28 U.S.C. § 2255. Additionally, the Court informed Petitioner that in the United States District Court for the Eastern District of Virginia, all *pro se* petitions for writs of habeas corpora must be filed on a set of standardized forms. *See* E.D. Va. Loc. Civ. R. 83.4(A). The Court mailed Petitioner the standardized form for filing a § 2255 motion and a § 2241 petition and directed him to complete and return the appropriate form to the Court within eleven (11) days of the date of entry hereof. The Court warned Petitioner that the failure to complete and return the form in a timely manner would result in dismissal of the action. *See* Fed. R. Civ. P. 41(b).

More than eleven (11) days have elapsed since the entry of the September 24, 2013 Memorandum Order and Petitioner has not responded. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE**.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this matter. The Court will deny Petitioner a certificate of appealability.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 11/6/13  
Richmond, Virginia

/s/   
John A. Gibney, Jr.  
United States District Judge