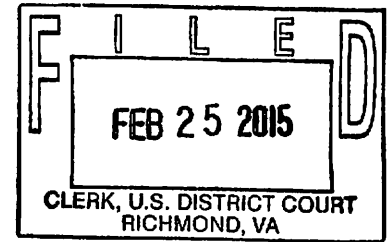


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



KENNETH WAYNE CLARK, JR.,            )  
  )  
    Petitioner,                            )  
v.    )     Civil Action No. 3:13CV760-HEH  
  )  
HAROLD CLARKE,                        )  
  )  
    Respondent.                         )

**MEMORANDUM OPINION**  
**(Adopting Report and Recommendation and Dismissing Action)**

Kenneth Wayne Clark, Jr., a Virginia inmate proceeding *pro se*, filed this petition for habeas corpus under 28 U.S.C. § 2254 (“§ 2254 Petition,” ECF No. 1) challenging his conviction in the Circuit Court for the City of Portsmouth, Virginia. On January 28, 2015, the Magistrate Judge recommended that Clark’s § 2254 Petition be dismissed because the claims lacked merit. The Court advised Clark that he could file objections within fourteen (14) days after the entry of the Report and Recommendation. Clark has not responded.

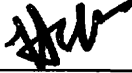
“The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those

issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). In the absence of a specific written objection, this Court may adopt a magistrate judge’s recommendation without conducting a de novo review. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

There being no objections, the Report and Recommendation will be accepted and adopted. The Motion to Dismiss (ECF No. 9) will be granted. Clark’s claims and the action will be dismissed.

An appropriate Final Order will accompany this Memorandum Opinion. A certificate of appealability will be denied.<sup>1</sup>

Date: Feb. 25, 2015  
Richmond, Virginia

  
\_\_\_\_\_/s/  
Henry E. Hudson  
United States District Judge

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<sup>1</sup> An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(a). A COA 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)). For the foregoing reasons, Clark fails to meet this standard. Accordingly, the Court will deny a certificate of appealability.