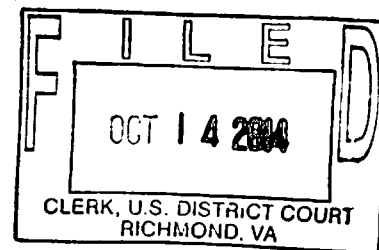


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



RALPH M. SMITH,

Petitioner,

v.

Civil Action No. 3:14CV348

EDDIE PEARSON,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia state prisoner proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. By Memorandum Order entered on September 8, 2014, the Court directed Petitioner within eleven (11) days of the date of entry thereof to show good cause why the present petition should not be dismissed without prejudice for lack of exhaustion. (ECF No. 8.) The Court warned Petitioner that the failure to comply with the Court's directive would result in summary dismissal of the action.

More than eleven (11) days have elapsed since the entry of the September 8, 2014 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: 10-10-14
Richmond, Virginia

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| <i>/s/</i> _____ James R. Spencer Senior U. S. District Judge |
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