

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

LEROY JOSEPH KELLY,

Petitioner,

v.

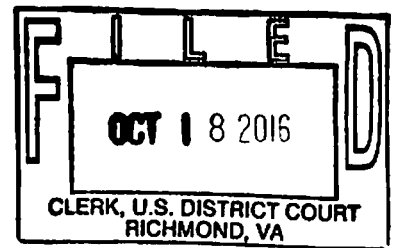
Civil Action No. 3:15CV243

DIRECTOR OF THE VIRGINIA
DEPARTMENT OF CORRECTIONS,

Respondent.

MEMORANDUM OPINION

Leroy Joseph Kelly, a Virginia state prisoner proceeding pro se, brings this petition pursuant to 28 U.S.C. § 2254 ("§ 2254 Petition," ECF No. 1). Kelly challenges his convictions in the Circuit Court for the County of Stafford ("Circuit Court"), for robbery and use of a firearm in the commission of a robbery. By Memorandum Opinion and Order entered on September 6, 2016, the Court dismissed all of Kelly's claims except for Claim One wherein Kelly claimed that he failed to receive the effective assistance of counsel because counsel failed to file an appeal as directed. Kelly v. Dir. Va. Dep't Corr., No. 3:15CV243, 2016 WL 4702476, at *7 (E.D. Va. Sept. 6, 2016). With respect to Claim One, Respondent acknowledged that "petitioner should be granted a delayed appeal of the criminal judgments to the Court of Appeals of Virginia." Id. at *7 (internal quotation marks and citation omitted). Therefore, the Court ordered the Director to submit further briefing with



respect to the form of the order granting Kelly relief on Claim One. Id.

The Director has responded. The Director notes that, following the entry of the September 6, 2016 Memorandum Opinion and Order, the Director moved the Court of Appeals of Virginia to grant Kelly permission to perfect an appeal from the October 3, 2000 judgment of the Circuit Court and make arrangements to appoint counsel for Kelly for that appeal. (Resp't's Br. 2, ECF No. 28 (citation omitted).) By Order entered September 21, 2016, the Court of Appeals of Virginia granted the Director's motion and appointed counsel to assist Kelly in litigating his appeal. (Resp't's Br. Ex. 2, at 1.) As Kelly has been granted all the relief to which he is entitled, Claim One will be dismissed as moot. The action will be dismissed and the Court will deny a certificate of appealability.

The Clerk of the Court is directed to send a copy of this Memorandum Opinion to Kelly and counsel of record.

It is so ORDERED.

/s/ *REP*
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: October 17, 2016