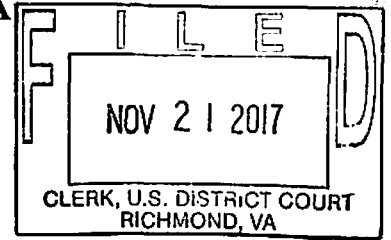


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



DERRICK JEROME HAWTHORNE,)
)
 Petitioner,)
)
 v.)
)
 WARDEN KISER,)
)
 Respondent.)

Civil Action No. 3:17CV541-HEH

MEMORANDUM OPINION
(Dismissing 28 U.S.C § 2254 Petition Without Prejudice)

Petitioner, a Virginia state prisoner proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. On October 3, 2017, the Court entered a Memorandum Order directing Petitioner to pay the \$5.00 filing fee, or explain any special circumstances that would warrant excusing payment of the filing fee, within eleven (11) days of the date of entry thereof. (“Memorandum Order,” ECF No. 6.) Further, the Court warned Petitioner that failure to do so would result in dismissal. More than eleven (11) days have elapsed since the entry of the 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 a certificate of appealability.

An appropriate order will accompany this Memorandum Opinion.



/s/

HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

Date: Nov. 21, 2017
Richmond, Virginia