

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

Richmond Division

DEMARCO A. SMITH,
Petitioner,

v.

Civil No. 3:20cv767(DJN)

STATE OF VIRGINIA, *et al.*,
Respondents.

MEMORANDUM OPINION


Petitioner, a Virginia state prisoner proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. By Memorandum Order entered on January 22, 2021, the Court directed Petitioner, within eleven (11) days of the date of entry thereof, to pay the \$5.00 filing fee or explain any special circumstances that would warrant excusing payment of the filing fee. (ECF No. 6.) The Court warned Petitioner that it would dismiss the action if Petitioner did not pay the filing fee or explain any special circumstances that would warrant excusing payment of the filing fee. More than eleven (11) days have elapsed since the entry of the January 22, 2021 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. A certificate of appealability will be DENIED.

An appropriate Order shall issue.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Petitioner.

/s/ 

David J. Novak
United States District Judge

Richmond, Virginia

Dated: March 22, 2021