

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

EARL NATHANIEL COMBS, JR.,

Petitioner,

v.

Civil Action No. **3:23CV601 (RCY)**

UNKNOWN,

Respondent.

MEMORANDUM OPINION


On September 20, 2023, the Court received a Motion for Reconsideration. ECF No. 1. Given the content of this document, it was deemed appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App'x 144, 145 (4th Cir. 2008). Accordingly, by Memorandum Order entered on September 28, 2023, the Court sent Petitioner the form for filing a 28 U.S.C. § 2254 petition. The Court informed Petitioner if he wished to proceed pursuant to 28 U.S.C. § 2254, he must complete the § 2254 Petition form and return the same to the Court within thirty (30) days of the date of entry thereof. The Court warned Petitioner that the failure to return to the § 2254 Petition form within thirty (30) days of the date of entry thereof would result in the dismissal of the action. *See Fed. R. Civ. P. 41(b)*.

More than thirty (30) days have elapsed since the entry of the September 28, 2023 Memorandum Order and Petitioner has not submitted the required form. Instead, Petitioner submitted a letter wherein he stated that he did not wish to pursue the current action. *See* ECF No. 3. 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: November 22, 2023
Richmond, Virginia



Roderick C. Young
United States District Judge