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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LARRY WAYNE SMITH,)	CASE NO. 7:14CV00686
)	
Petitioner,)	
v.)	MEMORANDUM OPINION
)	
DIRECTOR, VIRGINIA DEPARTMENT)	
OF CORRECTIONS,)	By: Glen E. Conrad
)	Chief United States District Judge
Respondent.)	

Larry Wayne Smith, a Virginia inmate proceeding pro se, has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. After a jury trial in Lee County Circuit Court, Smith was convicted of second degree murder, malicious wounding, and two counts of use of a firearm in the commission of a felony. Smith is serving a sentence of 53 years for these convictions. Respondent has filed a motion to dismiss, and Smith has responded.

The matter is presently before the court on the report and recommendation of U.S. Magistrate Judge Joel C. Hoppe, to whom the court referred this case, pursuant to 28 U.S.C. § 636(b)(1)(B). The report concludes that Smith is not entitled to relief under § 2254, because some of his claims are procedurally barred from federal habeas review and the state courts' adjudication of his other claims was not "contrary to" or "an unreasonable application of, clearly established Federal law" or "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Smith has filed timely objections to portions of the report; respondent has not objected to the report.

After de novo review of the challenged portions of the report and pertinent parts of the record, the court concludes that Smith's objections are without merit or merely repeat matters raised in his prior pleadings that are adequately addressed in the report. The court also concludes

that the report resolves Smith's claims in a manner consistent with the record and applicable law. Therefore, finding it appropriate to do so, the court will overrule Smith's objections and adopt the magistrate judge's report and recommendation in its entirety as the memorandum opinion of the court. An appropriate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 4th day of March, 2016.



Chief United States District Judge