

4-21-20 order From the U.S. Court of Appeals
For the Fourth Circuit Affirming the District
Court's order.

APPENDIX A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-7735

JAMES HENRY SIMPSON,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director of Department of Corrections,

Respondent - Appellee.

No. 19-7841

JAMES HENRY SIMPSON,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director of Department of Corrections,

Respondent - Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. John A. Gibney, Jr., District Judge; Roderick Charles Young, Magistrate Judge. (3:19-cv-00724-JAG-RCY)

Submitted: April 16, 2020

Decided: April 21, 2020

Before GREGORY, Chief Judge, and WYNN and DIAZ, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

James Simpson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Simpson seeks to challenge the district court's order directing him to refile the document the court construed as a 28 U.S.C. § 2254 (2018) petition on a court-approved form. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2018), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2018); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The order Simpson seeks to appeal is neither a final order nor an appealable interlocutory or collateral order.¹ Accordingly, we dismiss the appeal in No. 19-7735 for lack of jurisdiction and deny leave to proceed in forma pauperis.

Simpson also appeals the district court's order dismissing without prejudice his § 2254 petition for failure to prosecute.² On appeal, we confine our review to the issues raised in the Simpson's informal brief filed in No. 19-7841. *See* 4th Cir. R. 34(b). Because that informal brief does not challenge the basis for the district court's disposition, Simpson has forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit

¹ Although the district court subsequently dismissed the action before we considered these appeals, the doctrine of cumulative finality does not cure the jurisdictional defect. *See Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 479 (4th Cir. 2015) ("The doctrine applies . . . only when the appellant appeals from an order that the district court could have certified for immediate appeal under Rule 54(b).").

² We have jurisdiction over the appeal in No. 19-7841 because the district court dismissed the § 2254 petition "for procedural reasons unrelated to the contents of the pleadings." *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 624 (4th Cir. 2015).

rules, our review is limited to issues preserved in that brief.”). Accordingly, we affirm this portion of the appeal.³

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

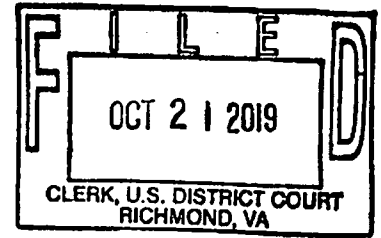
*DISMISSED IN PART,
AFFIRMED IN PART*

³ Although the appeal in No. 19-7841 arises from the disposition of a § 2254 petition, we conclude that a certificate of appealability is unnecessary. *See Harbison v. Bell*, 556 U.S. 180, 194 (2009).

The 10-21-19 and 11-25-19 orders From the District Court.

Appendix B

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



JAMES HENRY SIMPSON,

Petitioner,

v.

Civil Action No. 3:19CV724

HAROLD CLARKE,

Respondent.

MEMORANDUM ORDER
(Directing Petitioner to Complete and Return Form)

Petitioner, a Virginia inmate proceeding *pro se*, has submitted a "Motion to Waive Exhaustion Requirement." (ECF No. 1.) Given the content of this document, it is 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).

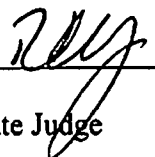
If Petitioner wishes to proceed pursuant to 28 U.S.C. § 2254, he must file a petition for a writ of habeas corpus on the proper form. The Clerk is DIRECTED to write the civil action number for the present action on the form and SEND the form to Petitioner. Because federal law prohibits the filing of any second or successive § 2254 petition, *see* 28 U.S.C. § 2244(a), Petitioner is strongly urged to present every available claim for relief in his first such motion. Petitioner is warned that federal law imposes a one-year statute of limitations on § 2254 petitions. 28 U.S.C. § 2244(d). Petitioner is also reminded that, before this Court can consider a § 2254 petition, he must first exhaust his state court remedies for all of his claims. *See* 28 U.S.C. § 2254(b), (c). Exhaustion is accomplished by presenting the claims to the Supreme Court of Virginia for review either on direct appeal or in a collateral proceeding. This Court cannot "waive" that requirement.

If Petitioner wishes to proceed under 28 U.S.C. § 2254, he must complete and return the form to the Court within twenty (20) days of the date of entry hereof. In the alternative, Petitioner may file, within twenty (20) days of the date of entry hereof, a motion to withdraw this action. If Petitioner fails to take any action within that time, the Court will dismiss the action without prejudice. *See* Fed. R. Civ. P. 41(b).

All correspondence for the Court shall be directed to: Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Petitioner.

It is SO ORDERED.



/s/ Roderick C. Young
United States Magistrate Judge

Date: October 21, 2019
Richmond, Virginia

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

JAMES HENRY SIMPSON,

Petitioner,

v.

Civil Action No. 3:19CV724

HAROLD CLARKE,

Respondent.

MEMORANDUM OPINION

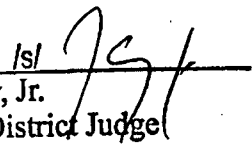
Petitioner, a Virginia prisoner proceeding *pro se*, submitted a “Motion to Waive Exhaustion Requirement.” (ECF No. 1.) Given the content of this document, the Court found it was appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App’x 144, 145 (4th Cir. 2008).

By Memorandum Order entered on October 21, 2019, the Court directed Petitioner, within twenty (20) days of the date of entry thereof, to complete and return the standardized form for filing a § 2254 petition if he wished to file a petition for a writ of habeas corpus. The Court warned Petitioner that the failure to comply with the terms of the October 21, 2019 Memorandum Order would result in the dismissal of the action. *See Fed. R. Civ. P. 41(b)*.

More than twenty (20) days have elapsed and Petitioner has not completed and returned the § 2254 form.¹ Accordingly, the action will be DISMISSED WITHOUT PREJUDICE. A certificate of appealability will be DENIED.

An appropriate Order shall accompany this Memorandum Opinion

Date: 25 Nov. 2019
Richmond, Virginia



John A. Gibney, Jr.
United States District Judge

¹ The Court received a second copy of the "Motion to Waive Exhaustion Requirement;" however, this submission was dated October 11, 2019. (ECF No. 3.)

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

JAMES HENRY SIMPSON,

Petitioner,

v.

Civil Action No. 3:19CV724

HAROLD CLARKE,

Respondent.

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that:


1. The action is DISMISSED WITHOUT PREJUDICE because Petitioner failed to return the standardized form for filing a 28 U.S.C. § petition; and,
2. A certificate of appealability is DENIED.

Should Petitioner desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the right to appeal.

The Clerk is DIRECTED to send a copy of this Memorandum Opinion and Order to Petitioner.

It is so ORDERED:

Date: 25 Nov. 2019
Richmond, Virginia



John A. Gibney, Jr.
United States District Judge