

FILED: July 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6366
(2:19-cv-00241-RAJ-LRL)

TORREY WASHINGTON

Petitioner - Appellant

v.

HAROLD W. CLARKE

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

UNPUBLISHED

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

No. 20-6366

TORREY WASHINGTON,

Petitioner - Appellant,

v.

HAROLD W. CLARKE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:19-cv-00241-RAJ-LRL)

Submitted: July 23, 2020

Decided: July 28, 2020

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Torrey Lavell Washington, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix B

PER CURIAM:

Torrey Lavell Washington seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Washington's 28 U.S.C. § 2254 (2018) petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2018). The magistrate judge recommended that relief be denied and advised Washington that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Washington has waived appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice.

Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. 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 THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

TORREY LAVELL WASHINGTON, #1305527,

Petitioner,

v.

CIVIL ACTION NO. 2:19cv241

HAROLD W. CLARKE, Warden,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254. ECF No. 1. Therein, the *pro se* Petitioner claims violation of his federal rights pertaining to his convictions and sentencing in Virginia Beach Circuit Court on July 17, 2013, for, Abduction, Armed Statutory Burglary, Robbery, and Use of a Firearm in the Commission of a Felony.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation filed January 14, 2020, the U.S. Magistrate Judge recommended dismissal of the Petition without prejudice. ECF No. 6. The Petitioner was advised of his right to file written objections to the Report and Recommendation. The Petitioner did not file written objections to the Report and Recommendation and the time to do so has expired.

Appendix B


Having reviewed the record and having heard no objection, the Court does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed January 14, 2020. It is, therefore, **ORDERED** that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Final Order to Petitioner and a copy of the petition, its related filings and this Final Order shall be served on the Respondent and the Attorney General by CM/ECF pursuant to their Agreement on Acceptance of Service with the Court.

It is so **ORDERED**.



Raymond A. Jackson
United States District Judge
RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

February 19, 2020

PER CURIAM:

The district court accepted the recommendation of the magistrate judge and dismissed Torrey Lavell Washington's petition for a writ of habeas corpus under 28 U.S.C. § 2254 (2018) on March 18, 2019. Washington filed a Fed. R. Civ. P. 60(b) motion for relief from judgment in May 2019; the district court construed that motion as an unauthorized successive § 2254 petition and dismissed it on June 26, 2019 for lack of jurisdiction, because Washington had not obtained prefiling authorization from this court. *See* 28 U.S.C. § 2244(b)(3)(A) (2018); *United States v. McRae*, 793 F.3d 392, 397-400 (4th Cir. 2015).

In appeal No. 19-7053, Washington appeals the district court's order dismissing his original habeas petition with prejudice. *See* Fed. R. App. P. 3(c)(1)(B); *Jackson v. Lightsey*, 775 F.3d 170, 175-76 (4th Cir. 2014) (noting we construe requirements of Rule 3 liberally to ascertain whether notice of appeal complies with those requirements). In appeal No. 19-7180, he appeals the district court's dismissal of his successive § 2254 petition. We dismiss both appeals for lack of jurisdiction because the notices of appeal were not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The district court entered its orders on March 18 and June 26, and Washington filed the corresponding

notices of appeal on July 11 and August 7, respectively. Because Washington failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period in either case, we deny leave to proceed in forma pauperis and dismiss the appeals.

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

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

TORREY LAVELL WASHINGTON, #1305527,

Petitioner,

v.

Case No.: 2:19-cv-241

HAROLD W. CLARKE,

Respondent.

REPORT AND RECOMMENDATION FOR DISMISSAL

This matter was initiated by a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 submitted by Torrey Lavell Washington, (“Petitioner”). ECF No. 1. The petition alleges violation of federal rights pertaining to his convictions in the Virginia Beach Circuit Court on July 17, 2013, for Abduction, Armed Statutory Burglary, Robbery, and Use of a Firearm in the Commission of a Felony. The matter was referred to the undersigned United States Magistrate Judge (“undersigned”) pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), Eastern District of Virginia Local Civil Rule 72, and the April 2, 2002, Standing Order on Assignment of Certain Matters to United States Magistrate Judges. For the reasons stated in this Report, the undersigned **RECOMMENDS** the Petitioner’s Petition be **DENIED and DISMISSED WITHOUT PREJUDICE**.

As the *pro se* Petitioner had not paid the required \$5.00 filing fee nor had he requested to proceed *in forma pauperis*, the Petition was conditionally filed. Federal law requires that a habeas petitioner pay a filing fee of \$5.00 or submit an affidavit requesting to proceed *in forma*

pauperis. On November 8, 2019, the Court ordered Petitioner to submit one of the following within thirty days: (1) the \$5.00 filing fee; or (2) an Affidavit in Support of Request to Proceed *in Forma Pauperis*. Furthermore, the Court advised Petitioner that the failure to provide the Clerk of the Court with either the requisite \$5.00 filing fee or an “Affidavit in Support of Request to Proceed *in Forma Pauperis*” would result in submission to a United States District Judge for recommended dismissal without prejudice. ECF No. 5. The Court has not received a filing fee, a request for an extension, a statement demonstrating Petitioner’s inability to pay, or any other correspondence from Petitioner, and the time allotted has expired.

In light of Petitioner’s failure to pay the required filing fee or submit an affidavit in support of a request to proceed *in forma pauperis*, the undersigned **RECOMMENDS** that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE**. Additionally, Petitioner filed a Motion for Entry of Factual Evidence and Filing of Judicial Notice. ECF No. 2. In light of the above, the Court cannot consider this motion and it is therefore **DENIED** as **MOOT**.

By receiving a copy of this Report and Recommendation, Petitioner is notified that:

1. Petitioner may file with the Clerk written objections to the above findings and recommendations within fourteen (14) days from the date this Report and Recommendation is forwarded to the objecting party. *See* 28 U.S.C. § 636(b)(1)(C), computed pursuant to Federal Rule of Civil Procedure 6(a).

2. A United States District Judge shall make a *de novo* determination of those portions of this report or specified findings or recommendations to which objection is made.

The Petitioner is further notified that failure to file timely objections to the findings and

recommendations set forth above will result in a waiver of the right to appeal from a judgment of this Court based on such findings and recommendations. *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984), *cert. denied*, 474 U.S. 1019 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1954).

The Clerk is DIRECTED to forward a copy of this Report and Recommendation to Petitioner.

It is so **ORDERED**.

/s/

Lawrence R. Leonard
United States Magistrate Judge

Lawrence R. Leonard
United States Magistrate Judge

Norfolk, Virginia
January 14, 2020