INDEX TO APPENDICIES

APPENDIX A **Page No.**

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

LAWRENCE E. MATTISON,

Petitioner,

v. ACTION NO. 4:20cv158

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

Respondent.

FINAL ORDER

Petitioner Lawrence E. Mattison ("Mattison"), previously a Virginia inmate, submitted a *pro se* petition pursuant to 28 U.S.C. § 2254, challenging his misdemeanor convictions in the Circuit Court for the City of Hampton for stalking and making annoying phone calls. ECF No. 1, at 1, 42. He was convicted following a bench trial on May 25, 2016, and sentenced to 12 months incarceration for stalking and a $500 fine for annoying phone calls. ECF No. 12-1.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. On March 30, 2021, the Magistrate Judge entered a report and recommendation, recommending that respondent's motion to dismiss be granted, Mattison's motion for summary judgment be denied, and Mattison's petition be denied and dismissed without prejudice. ECF No. 19. Mattison filed an objection to the report and recommendation on March 31, 2021, and a supplemental objection on April 8, 2021. ECF Nos. 21, 23. On March 31, 2021, Mattison filed a motion requesting briefing on whether a certificate

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of appealability should issue in the event of an adverse decision. ECF No. 22.

The Court, having reviewed the record and examined the objections filed by Mattison to the report and recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 10, is **GRANTED**, Mattison's motion for summary judgment, ECF No. 16, is **DENIED,** and Mattison's petition, ECF No. 1, is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

Finding that the basis for dismissal of Mattison's section 2254 petition is not debatable, and alternatively finding that Mattison has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000). Mattison's motion requesting briefing on the issue of a certificate of appealability, ECF No. 22, is **DENIED**.

Mattison is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. **If Mattison intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Mattison may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

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The Clerk shall mail a copy of this Final Order to Mattison and counsel of record for respondent.

Raymond A. Jackson
United States District Judge

Norfolk, Virginia
April 22, 2021

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Lawrence Mattison,

Petitioner/Appellant

v.

E. D. Va. case No. 4:20-cv-158

Harold W. Clarke,
Director Of the Virginia
Department Of Corrections

Respondent

MOTION ON REQUEST FOR A CERTIFICATE OF APPEALABILITY

Pro se Petitioner Lawrence Mattison ("Mattison, "Me", "I") request to this Court under Rule 11 of the Rules Governing section 2254 petitions, for a Certificate of Appealability ("COA"). Petitioner submitted a Motion for Reconsideration to the E.D. Va. court with these specific issues.

The issues presented on this motion are:

Whether a Certificate of Appealability should be granted on either issue(s):

(1) Whether the creation of or amendments to a Writ of Habeas corpus of a State court conviction abolish a Federal Court's power to convert Petitioner's Habeas writ into a Writ of Error Coram non Judice in petitioner's Circumstances without the need to re-file.

(2) Whether the E. D. Va. Court erred in Denying a COA even though it converted My Petition knowing subject-matter jurisdiction of the trial court

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was as issue and I was not incarcerated when both Federal Habeas were filed.[1]

(3) Whether the initial Habeas Petition revealed exceptional circumstance of a unrefuted violation of a 14th Amendment right to warrant conversion.

STATEMENT OF UNREFUTED FACT

Petitioner/Appellant Lawrence Mattison, ("Mattison", "Me", "I", "My") was unjustly "convicted" by a State court for alleged conduct on Department of Veterans Affairs ("DVA") property. The Petition makes clear that the Property is the Hampton Veterans Affairs Medical Center ("HVAMC") in Hampton Virginia. The petition makes clear that the HVAMC is a Federal enclave with exclusive criminal jurisdiction and specifically exclusive authority over it's employee relations. The Petition also makes clear that the State of Virginia granted the HVAMC exclusive criminal jurisdiction in an Act of the Virginia general Assembly many years prior to the issues on appeal. The petition also makes clear that under 38 CFR§14.560 (tailored specifically to the DVA) any alleged crime is under the sole authority of the Department of justice or a U.S. Attorney. The Petition and the record make clear that All transcript "Testimony" related to alleged (non criminal) conduct at the HVAMC and federal government interests, specifically federal employment interests and no State interests were at issue in the trial court.

[1] See SCOTUS cases 19-7509 and 17-8868 both denied without review of the jurisdiction claim.

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ISSUES ON REQUEST FOR COA

1. The first issue relates to writ of error coram non judice under 38 CFR §14.560 and Virginia's void ab initio exception. The question of conversion was left open related to processes available to a person wrongfully convicted in State court, where the Courts have presumed that a Writ of error engulfed the entire Federal 14th Amendment but the creation of the Habeas Writ only engulfed a small portion of the Federal 14th Amendment. Where the U.S. Supreme Court acknowledged this in the history of the Habeas writ and that prior to Habeas, writs of error was the rule. see Fay v. Noia, 83 S.Ct. 822@ 829. ("therefore the court acknowledge that every available remedy for the vindication of due process rights a higher calling than the "great writ" ITSELF. Vindication of due process is precisely its historic office.") (citation omitted). The Federal district court left open the question on authority of the Federal Court to issue writ of error coram non judice in HENDRY, et al V. The GEORGELAS GROUP, INC. et al, 2015 WL 268951, No. 1:14cv1455 (JCC/TCB) @ *2 claiming: "Assuming for purposes of this Motion only that Virginia law recognizes a cause of against based on Coram Non Judice, a two-year statute of limitation applies. See Va.Code § 8.01–248 ("Every personal action accruing on or after July 1, 1995, for which no limitation is otherwise prescribed, shall be brought within two years after the right to bring such action has accrued."). Similarly, a two-year statute of limitation applies to Plaintiffs' fraud claim. See Va.Code § 8.01–243."(citation omitted)

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The Virginia Supreme Court has always maintained: "An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." Evans v. Smyth–Wythe Airport Comm'n, 255 Va. 69, 73, 495 S.E.2d 825, 828 (1998)(quoting Anthony v. Kasey, 83 Va. 338, 340, 5 S.E. 176, 177 (1887)). "The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." Barnes v. Am. Fertilizer Co., 144 Va. 692, 705, 130 S.E. 902, 906 (1925). "Consequently, Rule 1:1 limiting the jurisdiction of a court to twenty-one days after the entry of the final order does not apply to an order which is void ab initio." Id.

In this case Mattison's Petition makes clear that Virginia's void ab initio exception is synonymous with a Writ of error coram non judice, where Virginia's void ab initio exception has no statute of limitation. See petition @ ECF No.1 .

In Petitioner's second objection to the Report & Recommendation it was made clear that the State trial court was not adjudicating state interests, all testimony related to Federal government interests, specifically federal employee interests. See ECF No. 16 (excerpt from trial) and ECF No. 23

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Mattison's point is that both Noia and Hendry claims are of voided State verdicts. Mattison's claim is also of a State verdict void ab initio and the Federal Court's power to pursue an adequate remedy such as conversion.

2. The second issue relates to the E. D. Va. court converting the initial petition where Mattison inadvertently created a legal anomaly when styling my case as "Mattison v. Commonwealth" with issues related to the lack of subject-matter jurisdiction of the State trial court over the issues presented to it and the fact I was not incarcerated when filing this federal habeas petition verses the title of the petition "writ of habeas corpus §2254". Instead, the E.D. Va. court converted my initial petition styling it: "Mattison v. Harold Clarke" even though My petition made clear that I was no longer incarcerated prior to filing the petition.

In this case Mattison's point is that if the E.D. Va. court allowed the filing, it should have ordered full compliance with rule 5 of §2254 cases (see ECF No.21), or convert the petition under their own powers then ordered a response to my void ab initio claim. Even with re-filing, it doesn't answer the question whether the initial petition may be converted or amended, where amendment of the Federal 14th Amendment violation would still contain a jurisdictional question whether or not the federal court's have the power apply Virginia's void ab initio exception, or the power to convert to a writ of error coram non judice then apply Virginia's void ab inito exception in petitioner's circumstances.

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3. The Third issue actually speaks to the 14th Amendment and the State's deprivation of life, liberty, or property under petitioner's due process rights and the initial petition could have been construed as such.

CONCLUSION

If no Federal 14th Amendment remedy is with the Federal Court's then there is no remedy for a State "conviction" that was void ab initio regardless of a "verdict' of guilt or innocence when the State's highest court refuses review on direct appeal and by State habeas petition. THEREFORE, Petitioner /Appellant request a COA from this court.

CERTIFICATE AND CLOSING

Under Federal Rules of Civil Procedure 11, I, Plaintiff; Lawrence E. Mattison, do by sign certify to the best of my knowledge, information and belief that this Motion for Certificate of Appealability: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery, and (4) this response otherwise complies with the requirements of rule 11.

A. Parties without an Attorney

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I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of Signing 5/7/21

Signature of Plaintiff L. Matt

Printed name of plaintiff LAWRENCE E. MATTISON

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CERTIFICATE OF SERVICE

I, Lawrence Mattison do certify that a copy of this MOTION FOR CERTIFICATE OF APPEALABILITY was sent by U. S. Postal Mail to Counsel for respondent: To Ms. Katherine Quinlan Adelfio; Asst. Virginia Attorney General @ Office of the Attorney General 202 North Ninth Street, Richmond, Virginia 23219, this was done on the 7TH day of MAY, 2021

Sign,

Lawrence E. Mattison
466 Fort Worth St.
Hampton, Virginia 23669
(757) 265-8788
La7matt@yahoo.com

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6276

LAWRENCE E. MATTISON,

Petitioner - Appellant,

v.

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

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, Senior District Judge. (4:20-cv-00158-RAJ-RJK)

Submitted: May 19, 2022 Decided: May 24, 2022

Before MOTZ and HARRIS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Lawrence Eliot Mattison, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lawrence E. Mattison seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Mattison's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Mattison has not made the requisite showing. Accordingly, we deny a certificate of appealability 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

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FILED: May 24, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6276
(4:20-cv-00158-RAJ-RJK)

LAWRENCE E. MATTISON

Petitioner - Appellant

v.

HAROLD W. CLARKE, Director, Virginia Department of Corrections

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

LAWRENCE E. MATTISON,

Petitioner,

v. ACTION NO. 4:20cv158

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

Respondent.

UNITED STATES MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

This matter is before the Court on a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Virginia inmate Lawrence E. Mattison ("Mattison"), respondent's motion to dismiss, and Mattison's motion for summary judgment. ECF Nos. 1, 10, 16. This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. For the following reasons, the Court **RECOMMENDS** that respondent's motion to dismiss, ECF No. 10, be **GRANTED**, Mattison's motion for summary judgment, ECF No. 16, be **DENIED,** and Mattison's petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE.**

I. FACTUAL AND PROCEDURAL HISTORY

On October 22, 2020, Mattison submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Mattison challenges his misdemeanor convictions for stalking and

making annoying phone calls. *Id.* at 1. He was convicted following a bench trial on May 25, 2016, and sentenced to 12 months incarceration for stalking and a $500 fine for annoying phone calls. ECF No. 12-1. Mattison appealed the convictions to the Court of Appeals of Virginia and the Supreme Court of Virginia, which denied his appeals. ECF No. 12-2; ECF No. 12-3, at 46.

While incarcerated, on October 19, 2016, Mattison filed a petition for a writ of habeas corpus in the Supreme Court of Virginia. ECF No. 12-4, at 2–8. After the respondent filed responsive pleadings, a number of motions followed, including motions for leave to amend and a motion to reconsider the amended petition. ECF No. 12-4, at 52–61. Ultimately, on July 25, 2018, the Supreme Court of Virginia dismissed Mattison's petition, ECF No. 12-4, at 62–66; at that time, Mattison had served the entirety of his sentence, ECF No. 1, at 16, 18–19. Mattison then filed a petition for a writ of certiorari in the Supreme Court of the United States, which was denied on February 24, 2020. *In re Mattison*, No. 19-5709 (2020).

On October 22, 2020, Mattison filed his current habeas petition in this Court. ECF No. 1. In his federal petition, Mattison asserts: (1) his convictions were improper because there was no subject matter jurisdiction in state court due to the federal enclave doctrine; (2) the convictions were obtained in violation of his Fourteenth Amendment rights; and (3) his counsel performed so ineffectively that Mattison was denied his Sixth Amendment right to effective assistance of counsel. *Id.* at 21–26, 30–31. On January 13, 2021, respondent Harold W. Clarke, director of the Virginia Department of Corrections, filed a Rule 5 answer, a motion to dismiss, and a brief in support of the motion to dismiss. ECF Nos. 10–12. Shortly after, on January 25, 2021, Mattison filed a response to the motion to dismiss, a motion for summary judgment, and a memorandum in support of summary judgment. ECF Nos. 15–17.

II. ANALYSIS

A. Mattison is not "in custody" pursuant to the challenged convictions which means this Court lacks subject matter jurisdiction to adjudicate his habeas petition.

The Court lacks subject matter jurisdiction to consider Mattison's petition attacking his convictions for stalking and annoying phone calls because Mattison is no longer in custody and was not in custody at the time of filing the petition. The federal habeas statute provides that a petitioner may file for relief only on the grounds that he is "*in custody* in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a) (emphasis added). This requirement is jurisdictional; that is, absent the "in custody" element, a district court has no subject matter jurisdiction and must dismiss the petition. *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989); *see also Robbins v. Clarke*, No. 2:15cv542, 2016 WL 8118191, at *2 (E.D. Va. Dec. 1, 2016).

In recent decades, the Supreme Court has expanded the meaning of "in custody" beyond mere physical confinement. Recognizing that "[h]istory, usage, and precedent . . . [show] there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient . . . to support the issuance of habeas corpus," the Court extended "in custody" to cover parole or probationary periods. *Jones v. Cunningham*, 371 U.S. 236, 240, 243 (1963). Ultimately, in determining if one is "in custody" at the time of filing a habeas petition, courts look for "one of two restraints on liberty, and perhaps both": (1) a degree of supervisory control over the petitioner; and (2) the presence of an imminent possibility of incarceration that would occur without a criminal trial or conviction. *Whorley v. Brilhart*, 359 F. Supp. 539, 541–42 (E.D. Va. 1973).

There is, however, a circumstance in which the Supreme Court has recognized that a petitioner who is no longer in state custody may still be eligible to have his or her habeas petition adjudicated—namely, when the petitioner *was* in custody at the time the petition was filed. *See*

Carafas v. LaVallee, 391 U.S. 234, 238 (1968). In *Carafas*, the petitioner was incarcerated at the time he filed his petition for a writ of habeas corpus. *Id.* at 236. After a lengthy procedural history but before a final adjudication on the petition, the petitioner was unconditionally released from parole and thus no longer "in custody." *Id.* Nevertheless, the Supreme Court held that the case was not moot, stating that "once [] federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner." *Id.* at 238.

In addressing the "in custody" requirement, Mattison asserts that he essentially remains in custody because he suffers "continuing collateral consequences" in the form of loss of employment, inability to gain employment, and stigma associated with his convictions. ECF No. 15, at 4–6. Mattison argues that there is "a presumption of collateral consequences" accompanying a criminal conviction. *Id.* at 4 (citing *Pollard v. United States*, 352 U.S. 354, 358 (1957)). He further argues that because a habeas petition is not automatically moot upon the release of the petitioner, *see Carafas*, 391 U.S. at 237–38, the "presumption of collateral consequences . . . creates a continuing case-or-controversy despite the lack of physical custody." ECF No. 15, at 4–5.

Mattison's argument confuses the case-or-controversy requirement with the statutory requirements for a court to have subject matter jurisdiction. *See* 28 U.S.C. § 2254(a). While Mattison is correct in stating that a petition does not automatically become moot upon a petitioner's release, he fails to acknowledge that a petitioner must be in custody at the time of filing for federal jurisdiction to attach. *See Maleng*, 490 U.S. at 491–92. Furthermore, the Supreme Court has already answered the specific question as to whether collateral consequences are sufficient to constitute custody—they are not. *Id.* at 491. In *Maleng*, the Court spoke directly to the confusion between mootness that arises when a petitioner files his petition and is subsequently released and

the actual "in custody" requirement in the statute. *Id.* at 491–92. The Court emphasized that in *Carafas*, it "rested th[e] holding *not* on the collateral consequences of the conviction, but on the fact that the petitioner had been in physical custody under the challenged conviction at the time the petition was filed." *Id.* To clarify the meaning of its holdings with regard to collateral consequences, the Court concluded, "[t]he negative implication of this holding is, of course, that once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." *Id.* at 492.

Courts continue to apply the rule that collateral consequences are not sufficient to constitute "custody." For example, the Fourth Circuit has held that the collateral consequence of requiring the petitioner to register in a sex offender registry is not sufficient to meet the "in custody" standard for a habeas petition. *Wilson v. Flaherty*, 689 F.3d 332, 336–38 (4th Cir. 2012). "To rule otherwise," the Fourth Circuit observed, "would drastically expand the writ of habeas corpus beyond its traditional purview and render § 2254's 'in custody' requirement meaningless." *Id.* at 338. Similarly, decisions from this Court have held that neither a three-year "good behavior period" nor the loss of driving privileges for ten years rises to the level of supervisory control necessary to deem the petitioners "in custody." *Robbins*, 2016 WL 8118191, at *3 (good behavior period); *Whorley*, 359 F. Supp. at 542 (loss of driving privileges). These consequences are at least as onerous and likely far more stigmatizing than the consequences that Mattison alleges in his petition.

As a result, Mattison is not "in custody" for the purposes of section 2254 and was not "in custody" at the time of filing his petition. Consequently, this Court lacks subject matter jurisdiction to address Mattison's habeas petition.

Similarly, the Court lacks subject matter jurisdiction to address Mattison's motion for summary judgment. The motion realleges his jurisdictional claims, arguing that the state trial court did not have jurisdiction to adjudicate criminal conduct on federal property at the Hampton VA Medical Center. ECF No. 17, at 1. It also realleges Mattison's Fourteenth Amendment claims, asserting that using state law to adjudicate the conduct that occurred on federal property violated his due process rights. ECF No. 17, at 28–29. Because this Court lacks jurisdiction to adjudicate Mattison's initial habeas claim, the Court also lacks jurisdiction to address the motion for summary judgment on the petition.

III. RECOMMENDATION

Mattison was not in custody for the 2016 stalking conviction when he filed his petition for a writ of habeas corpus and he was never in custody for the 2016 annoying phone calls conviction. Thus. this Court does not have subject matter jurisdiction over Mattison's petition challenging those convictions. It is therefore **RECOMMENDED** that respondent's motion to dismiss, ECF No. 10, be **GRANTED**, Mattison's motion for summary judgment, ECF No. 16, be **DENIED**, and Mattison's petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

IV. REVIEW PROCEDURE

By copy of this report and recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date this report is forwarded to the objecting party by Notice of Electronic Filing or mail, *see* 28 U.S.C. § 636(b)(1), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. Rule 6(d) of the Federal Rules of Civil Procedure permits an extra three (3) days, if service occurs by mail. A

party may respond to any other party's objections within fourteen (14) days after being served with a copy thereof. *See* Fed. R. Civ. P. 72(b)(2) (also computed pursuant to Rule 6(a) and (d) of the Federal Rules of Civil Procedure).

2. A 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 parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in a waiver of 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); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

/s/
Robert J. Krask
United States Magistrate Judge

Robert J. Krask
United States Magistrate Judge

Norfolk, Virginia
March 30, 2021

Clerk's Mailing Certificate

A copy of the foregoing was provided electronically to counsel for respondent and was mailed this date to:

Lawrence E. Mattison
466 Fort Worth St.
Hampton, VA 23669

By /s/ J. L. Meyers
Deputy Clerk

March 30, 2021