

UNPUBLISHED

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

No. 17-7013

RICHARD LEE CURRY, II,

Petitioner - Appellant,

v.

HAROLD CLARKE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:17-cv-00166-RBS-DEM)

Submitted: October 17, 2017

Decided: October 20, 2017

Before FLOYD and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Richard Lee Curry, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

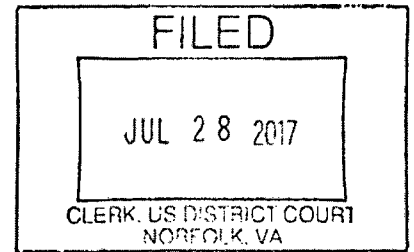
PER CURIAM:

Richard Lee Curry, II, seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) 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) (2012). 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) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). 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. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Curry 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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



RICHARD CURRY,

Petitioner,

v.

CIVIL NO. 2:17cv166

HAROLD W. CLARKE,

Respondent.

ORDER

On July 13, 2017, the court issued an order dismissing the Petitioner's Petition for Writ of Habeas Corpus ("Petition"). ECF No. 10. The Clerk entered Judgment on the Petition that same day. ECF No. 11. On July 24, 2017, the Petitioner filed a Motion to Vacate the Dismissal Order. ECF No. 12. The court has considered the Motion to Vacate and FINDS that it contains nothing new of merit or substance that would alter the Court's Dismissal Order or the Clerk's entry of Judgment thereon, both of which remain in full force and effect with the appeal time continuing to run.

The Petitioner is ADVISED that he may appeal from the dismissal of his habeas corpus action by sending, within sixty (60) days of the date of entry of this Order, a written notice of appeal to the Clerk of the United States District Court, 600 Granby Street, Norfolk, Virginia 23510. For the reasons stated

herein, the court declines to issue a certificate of appealability.

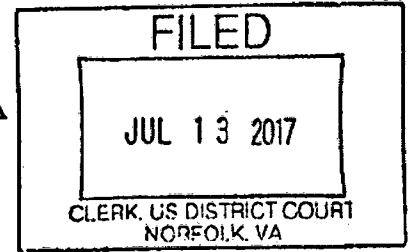
The Clerk is DIRECTED to send a copy of this Order to the Petitioner and to the United States Attorney at Norfolk.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
Chief Judge
REBECCA BEACH SMITH
CHIEF JUDGE

July 28, 2017

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



RICHARD LEE CURRY, II, #1442433,

Petitioner,

v.

ACTION NO. 2:17cv166

HAROLD W. CLARKE, Director
Virginia Department of Corrections,

Respondent.

DISMISSAL ORDER

The court received and filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 submitted by Petitioner Richard Lee Curry, II ("Curry" or "petitioner"), along with a Motion for Leave to Proceed In Forma Pauperis. (ECF Nos. 1, 2). The court initially denied petitioner's request to proceed in forma pauperis, but upon further review granted petitioner's request. (ECF No. 7).

The petition alleges violations of federal rights pertaining to Curry's convictions on August 19, 2011, in the Norfolk Circuit Court for malicious discharge of a firearm in the commission of a felony, attempted robbery, two counts of use of a firearm in the commission of a felony, two counts of conspiracy to commit robbery and robbery. As a result of the convictions, Curry was sentenced to serve 88 years in prison

with 70 suspended, leaving an active total time to serve of 18 years.

Curry's current petition appears to challenge the same convictions and sentences that he previously challenged in Civil Action Nos. 2:13cv129 and 2:16cv79, which were also filed in this court. Thus, his current petition falls under the successive petition provisions of the federal habeas statute. The court entered an Order directing the petitioner to show cause why his petition should not be dismissed as successive. (ECF No. 7). Although petitioner submitted a handwritten document along with attachments (ECF No. 8), his submissions do not provide any basis on which to conclude the petition is not successive. In fact, as an exhibit to his petition, Curry provided a copy of an Order from the Fourth Circuit Court of Appeals entered February 16, 2017, denying his motion to file a successive petition. (ECF No. 1-17).

This court has not received an order from the Court of Appeals for the Fourth Circuit authorizing the consideration of petitioner's successive application for a writ of habeas corpus. In fact, permission to file a second or successive petition has been clearly denied by the Fourth Circuit. Therefore, this Court is precluded from considering petitioner's application for a writ of habeas corpus.

Accordingly, it is ORDERED that Curry's current petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED for lack of jurisdiction under 28 U.S.C. § 2244(b)(3)(A).

Petitioner is ADVISED that he may appeal from the judgment entered pursuant to this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, U.S. Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within thirty (30) days from the date of this Dismissal Order. For the reasons stated above, the court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability.

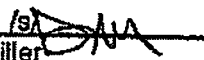
The Clerk is DIRECTED to mail a copy of this Dismissal Order to Petitioner at his last known address. A copy of the Dismissal Order shall also be served on the Respondent and the Attorney General by CM/ECF pursuant to their Agreement on Acceptance of Service with the Court.

/s/
Rebecca Beach Smith
Chief Judge/ *-RBS*

REBECCA BEACH SMITH
CHIEF UNITED STATES DISTRICT JUDGE

July 12, 2017

Order recommended by:


Douglas E. Miller
United States Magistrate Judge

DOUGLAS E. MILLER
UNITED STATES MAGISTRATE JUDGE