

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

<b>JOE MARK SMITH,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:00CV00344</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>DIRECTOR, VIRGINIA</b>	)	<b>By: Samuel G. Wilson</b>
<b>DEPARTMENT OF CORRECTIONS,</b>	)	<b>Chief United States District Judge</b>
	)	
<b>Respondent.</b>	)	

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by Joe Mark Smith challenging his parole eligibility date. The Supreme Court of Virginia denied his state petition for writ of habeas corpus asserting the identical claim. Respondent urges the court to dismiss the current petition because the earlier denial was not based upon an unreasonable determination of the facts. Instead, the court dismisses the petition because Smith's parole mooted the claim.

**I.**

On March 21, 1997, the Circuit Court for Wise County and City of Norton convicted and sentenced Smith as follows: (1) driving after having been declared an habitual offender –three years with the execution of two years suspended (F96-200); (2) driving while intoxicated, third offense–30 days in jail (M. 96-514); (3) probation violation–five years (F93-223); (4) probation violation–two years (F94-16); and (5) probation violation–four years (F95-155). On July 16, 1999, on Smith's motion, the circuit court modified the March 21, 1997, sentence by running the two year sentence imposed in F94-16 and the four-year sentence imposed in F95-155 concurrent

with the sentence imposed in F93-223 for a total sentence of six years and 30 days.

Smith filed his state habeas petition in the Supreme Court of Virginia on November 16, 1999, asserting two related claims affecting his release date. He maintained that the Virginia Department of Corrections Court and Legal Services Unit violated his due process rights, first, by incorrectly computing his “prison sentence time to serve” and, second, by refusing “to incorporate a total of 54 Judicial Good Time days (JGT) into his time computation . . . .” The respondent filed in the Supreme Court of Virginia the affidavit of James M. Sisk, the Manager of Central Criminal and Legal Records for the Virginia Department of Corrections, which detailed Sisk’s parole calculations and which concluded that Smith’s anticipated discretionary parole eligibility date was May 29, 2000, and Smith’s mandatory parole release date was July 24, 2000. Smith filed his own calculations showing a discretionary parole eligibility date of late April 2000. Presumably, after considering Virginia’s pertinent statutes and regulations, the Supreme Court of Virginia dismissed Smith’s petition.

Smith filed his current federal petition on April 28, 2000. On May 22, 2000, respondent filed the Supreme Court record and moved to dismiss Smith’s petition because the Supreme Court of Virginia’s adjudication neither resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law nor resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

Virginia paroled Smith on July 24, 2000. The court notified Smith that his petition for writ of habeas corpus appeared moot and directed him to explain “what *current* adverse consequences were caused by the due process violations he alleges, and how the writ of habeas

corpus he seeks could remedy or redress those consequences.” Smith responded by detailing mental anguish, grief, and other “undue hardships,” noting that he seeks “restitution.”

## II.

Clearly, the current adverse consequences of the due process violations that Smith alleges are not redressable through a writ of habeas corpus. Nor can the court conceptualize any current adverse consequence redressable by the writ. “A basic principle of standing is that a person is not entitled to litigate in a federal court unless he can show a reasonable probability of obtaining a tangible benefit from winning.” *Diaz v. Duckworth*, 143 F.3d 345, 347 (7th Cir. 1998); *see also Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (“[T]hroughout the litigation, the plaintiff ‘must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.’”) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)). The remedy Smith seeks is not available in a habeas corpus proceeding. Accordingly, the court will dismiss his petition because it is moot.

## III.

For the reasons stated, the court will dismiss Smith’s petition for writ of habeas corpus. An appropriate order will be entered this day.

**ENTER:** this 7th day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE

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FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JOE MARK SMITH,	)	
	)	
Petitioner,	)	Civil Action No. 7:00CV00344
	)	
v.	)	<u>FINAL ORDER</u>
	)	
DIRECTOR, VIRGINIA	)	By: Samuel G. Wilson
DEPARTMENT OF CORRECTIONS,	)	Chief United States District Judge
	)	
Respondent.	)	

In accordance with the memorandum opinion entered on this date, it is **ORDERED and ADJUDGED** that Joe Mark Smith's petition for writ of habeas corpus is dismissed as moot.

**ENTER:** this 7th day of March, 2001.

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CHIEF UNITED STATES DISTRICT JUDGE