

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

Mario Roebuck,

Petitioner,

v.

**RICK MULGRAV, Director,
Bureau of Corrections,**

Respondent.

1:17-cv-00053

**TO: Mario Roebuck, # 16-0275, *Pro se*
Citrus County Detention Facility
2604 W. Woodland Ridge Drive
Lecanto, FL 34461**

REPORT AND RECOMMENDATION

THIS MATTER is before the Court upon the Order (ECF No. 6) of Chief Judge Wilma A. Lewis in Civil No. 17-00053 referring Petitioner Mario Roebuck's *pro se* Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (ECF Nos. 1 and 2) to the undersigned for a report and recommendation.¹ For the reasons that follow, the undersigned recommends that Petitioner's Petition be denied without prejudice.

I. Procedural History

On March 27, 2009, a jury found Mario Roebuck guilty of first degree murder, first degree robbery, use of a dangerous weapon during the commission of a crime of violence, and unauthorized possession of a firearm in connection with the December, 2005, robbery of the A.A. Dubois Jewelry Store during which Alvin Dubois was shot and killed. On July 15,

¹ References to the United States Code are to the electronic versions found in Lexis.

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2009, Roebuck was sentenced to life without parole for first degree murder, to 30 years for first degree robbery, to 15 years for using a dangerous weapon during a crime of violence, and to 20 years for unauthorized possession of a firearm. Judgment and Commitment, entered August 3, 2009. Roebuck timely appealed the verdict to the Virgin Islands Supreme Court. The appeal was dismissed for failure to prosecute. Dismissal Order, entered June 21, 2010.² On July 26, 2010, Roebuck filed a petition for habeas corpus in the Superior Court. St. Croix Civil No. 10-399. On June 22, 2012, Superior Court Magistrate Judge Camacho returned a recommendation to the Presiding Judge that Roebuck's Petition be denied. A final order has not been issued.

II. Legal Principles

A. Statute of Limitations

Title 28 Section 2244 of the United States Code reads, in pertinent part, “(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244.

B. Exhaustion

Title 28 Section 2254 of the United States Code reads, in pertinent part, “[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the

² Virgin Islands Supreme Court Record of *Roebuck v. People of the Virgin Islands*, <https://efile.visupremecourt.org/public/caseView.do?csIID=5>. Retrieved May 23, 2018.

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judgment of a State court shall not be granted unless it appears that—(A) the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A).

III. Discussion

The Superior Court has not issued a final ruling on Roebuck’s Superior Court habeas petition. Accordingly, Roebuck’s § 2254 Petition is untimely. Therefore, this Court recommends denying the instant Petition without prejudice.

IV. Conclusion

Based upon the foregoing, IT IS HEREBY RECOMMENDED that Petitioner Mario Roebuck’s Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (ECF Nos. 1 and 2) be **DENIED WITHOUT PREJUDICE**.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: May 23, 2018

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
MAGISTRATE JUDGE