

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

|                                     |   |                           |
|-------------------------------------|---|---------------------------|
| Gerald J. Van Hoorelbeke,           | ) | C/A NO. 0:08-3869-CMC-PJG |
|                                     | ) |                           |
| Petitioner,                         | ) |                           |
|                                     | ) | <b>OPINION and ORDER</b>  |
| v.                                  | ) |                           |
|                                     | ) |                           |
| United States of America; Warden of | ) |                           |
| FCI – Edgefield,                    | ) |                           |
|                                     | ) |                           |
| Respondents.                        | ) |                           |
| _____                               | ) |                           |

This matter is before the court on Plaintiff’s *pro se* petition for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation (“Report”). On December 15, 2009, the Magistrate Judge issued a Report recommending that the Respondents’ motion for summary judgment be granted and this matter dismissed with prejudice. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on December 28, 2009.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner's objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Petitioner contends that he "only possessed the firearm" in question, Ans. and Objections at 1 (Dkt. #48, filed Dec. 28, 2009), but did not "use" it. This objections is without merit.

Respondents' motion for summary judgment is **granted** and this petition is dismissed with prejudice.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
January 8, 2010