

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

Elson McKanic,)	
)	
Petitioner,)	C.A. No. 0:19-2680-HMH-PJG
)	
vs.)	OPINION & ORDER
)	
Warden Lewis,)	
)	
Respondent.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 of the District of South Carolina.¹ Elson McKanic (“McKanic”) is a pro se prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In her Report and Recommendation, Magistrate Judge Gossett recommends dismissing McKanic’s habeas petition as successive pursuant to 28 U.S.C. § 2244(b)(2). (R&R 3-4, ECF No. 7.)

McKanic filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which 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 with instructions. 28 U.S.C. § 636(b)(1).

judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of McKanic's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, the court was able to glean one specific objection.

McKanic specifically objects to the magistrate judge's conclusion that his petition should be dismissed as successive, arguing that the state court authorized the instant petition challenging the expiration of his current sentence. (Obj. 1, ECF No. 9.) This argument is without merit.

McKanic has previously filed several § 2254 petitions. McKanic v. Bazzle, C/A No. 9:04-cv-1835-HMH (summary judgment granted based on petition not timely); McKanic v. Ozmint, C/A No. 9:06-cv-1598-HMH (dismissed as successive); McKanic v. Ozmint, C/A No. 9:07-cv-800-HMH (dismissed as successive). “[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)). “The court of appeals must examine the application to determine whether it contains any claim that satisfies § 2244(b)(2). . . .” Id. In the absence of pre-filing authorization from the court of appeals, the district court is without jurisdiction to consider a second or successive application. Id. (citation omitted). McKanic has not obtained authorization from the appropriate United States Court of Appeals to proceed with a second or successive § 2254 petition.

After a through review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Gossett's Report and Recommendation and incorporates it herein. Because the court lacks jurisdiction over this successive § 2254 petition, it must be dismissed.

It is therefore

ORDERED that McKanic's § 2254 petition, docket number 1, is dismissed without prejudice and without requiring the Respondent to file a return. It is further

ORDERED that a certificate of appealability is denied because McKanic has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
November 6, 2019

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.