

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Robert Lewis Griffin,) C/A No.: 0:07-1609-JFA
)
 Plaintiff,)
 vs.) **ORDER**
)
 Jason Catoe; Larry Neely; and Paul Smith,)
)
 Defendants.)
)

The *pro se* plaintiff, Robert Griffin, is an inmate of the South Carolina Department of Corrections. He initiated this action pursuant to 42 U.S.C. § 1983 contending that while defendants were restraining and arresting him, they used excessive force and caused him physical injuries.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation (“Report”) dated August 28, 2008, in which he suggests that the court grant defendants’ motion for summary judgment. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report. He requested an

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. 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. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

extension of time to file his objections, and the court granted an extension until September 15, 2008. However, plaintiff failed to file any objections to the Report. In the absence of an objection, the court reviews the Report only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to a report and recommendation results in waiver of the right to appeal from a judgment of the court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

Plaintiff claims that the defendants used excessive force in arresting him in violation of the Fourth Amendment. The Report suggests the court dismiss plaintiff's excessive force claim because defendants' actions were objectively reasonable in light of the facts and circumstances confronting them, in accordance with *Graham v. Connor*, 490 U.S. 386 (1989).

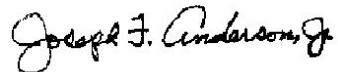
The defendants' uncontested affidavits indicate that plaintiff was fighting with others in a roadway when the defendants attempted to restrain him. The plaintiff broke away and attacked another individual in handcuffs. The defendants tasered the plaintiff who continued to resist the defendants' attempts at restraint while the plaintiff exhibited an aggressive demeanor. The record reveals that no significant injuries were noted by the medical professionals at the hospital and the plaintiff was given Motrin and Neosporin.

In light of the foregoing circumstances, the court finds defendants' actions were objectively reasonable, and accepts the Report's recommendation to dismiss the claim that

defendants used excessive force. Having so decided, the court finds it unnecessary to evaluate whether the injury was *de minimis* or to consider whether qualified immunity would otherwise apply.

After a careful review of the record, the applicable law, and the Report, the court finds defendants' motion for summary judgment should be granted. The court accepts and incorporates by reference the portions of the Report not inconsistent herewith.

IT IS SO ORDERED.



September 26, 2008
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge