

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

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|---|---|---------------------------|
| Mr. Leroy Lockett, |) | C/A NO. 0:13-2115-CMC-PJG |
| |) | |
| Plaintiff, |) | |
| |) | OPINION and ORDER |
| v. |) | |
| |) | |
| Ms. S. Bracey Simon, Lee Correctional |) | |
| Postal/Mailroom Staff; Associate Warden |) | |
| J.J. Brooks, Jr., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

This matter is before the court on Plaintiff’s *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation (“Report”). On May 28, 2015, the Magistrate Judge issued a Report recommending that Defendants’ motion for summary judgment be granted, that Plaintiff’s pending motions be terminated as moot, and this be matter dismissed with prejudice. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so.

On June 19, 2015, the court adopted the Report and granted summary judgment to Defendants. ECF No. 127. On June 29, 2015, the court received Plaintiff’s motion for extension of time to file objections which had been mailed on June 19, 2015. ECF No. 130. Out of an abundance of caution, the court vacated its order and the judgment entered June 19, and granted Plaintiff’s motion for an extension of time to file objections. Plaintiff filed a second motion for

extension on July 23, 2015. This motion was also granted,¹ and Plaintiff filed objections on August 17, 2015.

A review of Plaintiff's objections reveals that Plaintiff fails to overcome Defendants' motion for summary judgment. Plaintiff's previous habeas corpus petition² was dismissed with prejudice as untimely filed. As relates to the current case, Plaintiff fails to establish an actual injury necessary to sustain this matter. That is, that he would be entitled to equitable tolling of the statute of limitations for filing his federal habeas corpus petition, that his federal habeas corpus petition was nonfrivolous, or that it was arguably meritorious. As noted by the Magistrate Judge, even taking as true Plaintiff's allegations regarding Defendant's alleged deliberate actions in the delay of the mailing of his motion for extension of time, Plaintiff cannot show that the habeas corpus petition would not have been dismissed as untimely filed.

The court therefore **grants** Defendants' motion for summary judgment and dismisses this matter with prejudice.

IT IS SO ORDERED.

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

Columbia, South Carolina
August 24, 2015

¹The Clerk shall terminate ECF Nos. 130 and 137 as granted.

²*Lockett v. Bodison*, D.S.C. Civil Action No. 0:09-1101-CMC-PJG.