

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

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No. 0:14-cv-1548-RMG

Andrew Drayton, Jr.,)
)
Plaintiff,)
)
v.)
)
State, etc.,)
)
Defendant.)
_____)

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that this case be dismissed without prejudice and without issuance and service of process under 28 U.S.C. § 1915. (Dkt. No. 22). As set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a pro se litigant proceeding *in forma pauperis*, filed this civil action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e), this matter was automatically referred to a United States Magistrate Judge for pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). The Magistrate Judge then issued the present R&R. (Dkt. No. 22). Plaintiff then filed objections to the R&R. (Dkt. No. 25).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

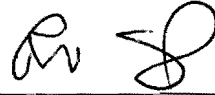
Discussion

After review of the record, the R&R, and Plaintiff’s objections, the Court finds that the Magistrate Judge applied sound legal principles to facts of this case and therefore agrees with and adopts the R&R as the order of the Court. The Court agrees with the Magistrate Judge’s finding that this case must be dismissed under 28 U.S.C. § 1915(e)(2)(B) because the only defendant, the State of South Carolina, is entitled to immunity under the Eleventh Amendment. Plaintiff’s objection does not address this conclusion. Rather, Plaintiff has filed with the Court a copy of a “sentencing sheet” from a state criminal case and a letter dated June 24, 2014, from a Regulatory Officer of the City of North Charleston denying Plaintiff’s application for a taxi driver permit. (Dkt. Nos. 25, 25-1). The Court finds this objection is not responsive to the R&R and provides no basis for departing from the Magistrate Judge’s recommendation.

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 22). Accordingly, this case is dismissed without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

July 3, 2014
Charleston, South Carolina