

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

Travis Gathers, #1505721,

Plaintiff,

vs.

Ryan Thomas, Individually; Luke Boiling,  
Individually; Daniel Popov, Individually;  
Paul L. Dillingham; Michael Kendree; York  
County, Servants, Agents, and Employees;  
City of Rock Hill Police Department,  
Servants, Agents, and Employees; City of  
Rock Hill Municipal Court, Servants,  
Agents, and Employees; and York County  
Public Defender, Servants, Agents, and  
Employees,

Defendants.

Civil Action No. 0:18-cv-711-CMC

**OPINION AND ORDER**

This matter is before the court on Plaintiff's Complaint pursuant to 42 U.S.C. § 1983. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings. On April 4, 2018, the Magistrate Judge issued a Report recommending summary dismissal without prejudice and without issuance and service of process as to the claims against Defendants Dillingham, Kendree, York County, City of Rock Hill Police Department, City of Rock Hill Municipal Court, and the York County Public Defender. ECF No. 7. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff did not file objections and the time for doing so has passed.

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). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After considering the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the Report’s recommendation certain Defendants be dismissed. It does not appear Plaintiff would be able to amend his Complaint to allege any facts that would allow him to sue these Defendants. Accordingly, the court adopts the Report by reference in this Order. Plaintiff’s claims against Defendants Dillingham, Kendree<sup>1</sup>, York County,

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<sup>1</sup> Defendants Dillingham and Kendree are identified by Plaintiff as the City Attorney for Rock Hill and the County Attorney for the County of York, respectively. To the extent the facts alleged by Plaintiff against the Rock Hill Municipal Court or York County could be construed as being alleged against these Defendants, the court notes in the alternative they are entitled to prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (“Solicitors are immune from § 1983 claims where their alleged actions are intimately associated with the judicial phase of the criminal process.”).

City of Rock Hill Police Department, City of Rock Hill Municipal Court, and the York County Public Defender are dismissed without prejudice and without issuance and service of process. The case will proceed as to Plaintiff's claims against Defendants Thomas, Boiling, and Popov, and is re-referred to the Magistrate Judge for further pre-trial proceedings.

**IT IS SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
April 26, 2018