

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

William Young,

Petitioner,

vs.

B.M. Antonelli,

Respondent.

Civil Action No. 0:18-1010-CMC

OPINION AND ORDER

This matter is before the court on Petitioner's *pro se* application for writ of habeas corpus filed in this court pursuant to 28 U.S.C. § 2241. ECF No. 1. On June 20, 2018, Respondent filed a return and a motion to dismiss, arguing the Petition presents a claim not cognizable on collateral review and is based on a clarifying amendment to the Sentencing Guidelines not made retroactive. ECF Nos. 12, 13. Petitioner filed a response in opposition on July 2, 2018, and a supplement on July 16, 2018. ECF Nos. 16, 18.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On August 16, 2018, the Magistrate Judge issued a Report recommending the motion to dismiss be denied to allow further development of the record.¹ ECF No. 19. 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. The court has received no objections and the time for doing so has expired.

¹ The same document contains an Order appointing the Federal Public Defender to represent Petitioner for the remainder of the case or until further order of the court. ECF No. 19. The Public Defender has since entered an appearance in the case. ECF No. 22.

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 reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report by reference in this Order, and Respondent’s motion is denied without prejudice to renew its arguments on a more fully developed record. Further briefing shall address the issues raised in the Report, including application of *United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018), timeliness under § 2241, retroactivity of *Burrage v. United States*, 571 U.S. 204 (2014), application of the mandatory guidelines, development of the record, and any other arguments the parties wish the court to consider.

A supplemental brief from Petitioner is due October 12, 2018. Respondent shall file a response by October 26, 2018, and Petitioner may file a reply by November 2, 2012.

IT IS SO ORDERED.

Columbia, South Carolina
September 12, 2018

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