

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

Samuel Leroy Smith,)	
)	C.A. No. 1:08-3023-HMH-WMC
Plaintiff,)	
)	OPINION & ORDER
vs.)	
)	
Monica Denise Miller,)	
)	
Defendant.)	

This matter is before the court on Samuel Leroy Smith’s (“Smith”) “objection” to the court’s November 18, 2008 order adopting the Report and Recommendation of United States Magistrate Judge William M. Catoe. On September 29, 2008, the court adopted Magistrate Judge Catoe’s Report and Recommendation without objection. On October 27, 2008, Smith filed objections alleging that he never received a copy of the Report and Recommendation until October 24, 2008, after he requested a copy. Giving Smith the benefit of the doubt, on November 3, 2008, the court granted Smith ten (10) days from the date of the order to file objections. Further, the court denied Smith’s baseless motion for recusal. On November 18, 2008, the court rescinded its September 29, 2008 order adopting the Report and Recommendation.

On November 17, 2008, Smith filed objections to the Report and Recommendation. After review, on November 18, 2008, the court adopted the magistrate judge’s Report and Recommendation and summarily dismissed the case without prejudice and without issuance and

service of process for lack of subject matter jurisdiction. On December 18, 2008, Smith filed objections to the court's November 18, 2008 order.

The court construes Smith's objections as a motion filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure seeking relief from a final judgment. Smith has asserted no grounds for relief. Rule 60(b) "invest[s] federal courts with the power in certain restricted circumstances to vacate judgments whenever such action is appropriate to accomplish justice." Compton v. Alton S.S. Co., 608 F.2d 96, 101-02 (4th Cir. 1979) (internal quotation marks omitted). Rule 60(b) "does not authorize a motion merely for reconsideration of a legal issue." United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). "Where the motion is nothing more than a request that the district court change its mind . . . it is not authorized by Rule 60(b)." Id. at 313. Smith has presented no basis for the court to grant relief pursuant to Rule 60(b). See Fed. R. Civ. P. 60(b) (enumerating grounds for relief).

In his motion, Smith reasserts the allegations made in his objections to the Report and Recommendation and presents no new facts or evidence which alter the court's original findings in the November 18, 2008 order. Accordingly, Smith's motion is denied.

Therefore, it is

ORDERED that Smith's motion, docket number 21, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

December 22, 2008
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.