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

Jerry Gordon, Plaintiff, v. Ms. Fishburn, Nurse, Allendale Correctional Institution; S.C. Department of Corrections; S.C. Department of Corrections' Medical Department of Allendale Correctional Institution, Defendants.	)	C/A No. 1:10-3046-JFA-SVH ORDER

The *pro se* plaintiff, Jerry Gordon, brings this action pursuant to 42 U.S.C. § 1983 claiming violations of his constitutional rights by the defendants. Specifically, the plaintiff contends that the defendants were deliberately indifferent to his serious medical need when the plaintiff suffered a heart attack. At the time the complaint was filed, the plaintiff was incarcerated at the Allendale Correctional Institution.

The Magistrate Judge assigned to this action[1] has prepared a Report and Recommendation wherein she suggests that this court should dismiss the defendants South Carolina Department of Corrections (SCDC) and the South Carolina Department of Corrections Medical Department of Allendale Correctional Institution (SCDC Medical)

[1] The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. 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. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

because they are not "persons" amenable to suit under § 1983. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation and without a hearing.

The plaintiff was advised of his right to file objections to the Report and Recommendation which was filed on February 7, 2011. Plaintiff did not file objections to the Report. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

As the Magistrate Judge correctly notes, only "persons" may act under color of state law, therefore, a defendant in a § 1983 action must qualify as a "person." A state or state agency is not a person for purposes of a § 1983 damages action. *Will v. Mich. Dep't of State Police*, 491 U.S. 58 (1989).

After a careful review of the record, the applicable law, the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper and incorporates the Report herein by reference. Accordingly, defendants SCDC and SCDC Medical are dismissed without prejudice and without issuance and service of process.

The Clerk shall return this file to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Joseph F. Anderson, Jr.

March 7, 2011
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge