

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Allen Blackthorne <i>aka</i>)	
Allan Blackthorne,)	
)	
Plaintiff,)	C.A. No. 1:10-cv-03086-JMC
)	
v.)	OPINION & ORDER
)	
John R. Owen, Warden,)	
)	
Defendant.)	
_____)	

This matter is now before the court upon the Magistrate Judge’s Report and Recommendation [Doc. 12], filed on February 8, 2011, recommending that Plaintiff’s petition for relief from sentence be dismissed without prejudice and without issuance of service of process. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s recommendation without a recitation.

STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the

Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. 636(b)(1).

DISCUSSION

Plaintiff Allan Blackthorne is a *pro se* litigant petitioning for relief under 28 U.S.C. § 2241 and 28 U.S.C. § 1651(a). Plaintiff specifically alleges that he was convicted on the basis of perjury committed by both a witness and the prosecutor.

Plaintiff timely filed objections to the Magistrate Judge's Report recommending dismissal of the petition without prejudice and without issuance of service of process. Objections to the Report and Recommendation must specifically identify the portions of the Report to which objections are made as well as the basis for such objections; failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n.4 (4th Cir. 1984).

Here, Plaintiff does not specifically object to any of the Magistrate Judge's findings, but merely restates that he was convicted on the basis of perjury. He further states that he has attached letters that prove he was wrongly convicted, but there are no attachments to the objections. Because Plaintiff offers no specific objections, after a thorough review of the Magistrate Judge's Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein by reference.

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met.

The court has reviewed the petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised herein. The petitioner is advised that he may seek a certificate from the United States Court of Appeals for the Fourth Circuit under Rule 22 of the Federal Rules of Appellate Procedure.

CONCLUSION

It is therefore **ORDERED** that Plaintiff's petition for relief from sentence is **DISMISSED** without prejudice or issuance of service of process.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

July 7, 2011
Greenville, South Carolina