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

Paul Cross, PETITIONER v. M. Cruz, Warden FCI Williamsburg, RESPONDENT	C/A No. 1:14-cv-00089-TLW **Order**

Petitioner Paul Cross, proceeding pro se, submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging a sentence imposed on him in the Southern District of Florida. The matter now comes before the Court for review of the Report and Recommendation ("Report") filed on March 6, 2014 by Magistrate Judge Hodges, to whom this case was assigned. (Doc. #11.) In the Report, the Magistrate Judge recommends dismissing the petition without prejudice. The basis of this recommendation is that Petitioner's claim is not properly raised in a § 2241 habeas petition and cannot be saved by § 2255's savings clause. Petitioner filed objections on March 26, 2014. (Doc. #15.) This matter is now ripe for decision.

In reviewing the Magistrate Judge's recommendation, the Court applies the following standard:

> The magistrate judge makes only a recommendation to the Court, to which any party may file written objections . . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the

magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and the objections, for the reasons stated by the Magistrate Judge, the Report is **ACCEPTED**. Petitioner's objections are **OVERRULED**. Petitioner's motion for relief pursuant to § 2241 is **DENIED**. This action is hereby **DISMISSED WITHOUT PREJUDICE**.

Petitioner has also filed a Motion for Appointment of Counsel. (Doc. #16.) In light of the Court's ruling above, this motion is **DENIED AS MOOT**.

IT IS SO ORDERED.[1]

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

July 2, 2014
Columbia, South Carolina

[1] Unlike in a § 2254 or § 2255 proceeding, it is not necessary for a petitioner to obtain a certificate of appealability to appeal an order dismissing a § 2241 petition. Sanders *v. O'Brien*, 376 F. App'x 306, 307 (4th Cir. 2010).