

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

James B. Curry, #186737,

Plaintiff,

vs.

United States Supreme Court; Scott S. Harris,  
Clerk of Court for the Supreme Court of the  
United States,

Defendants.

C/A No. 1:16-2733-JFA

**ORDER**

James B. Curry (“Plaintiff”), proceeding pro se and in forma pauperis, filed this action against the United States Supreme Court and Scott S. Harris, Clerk of Court for the United States Supreme Court (collectively “Defendants”) alleging a violation of his constitutional rights. ECF No. 1.

The Magistrate Judge assigned to this action<sup>1</sup> prepared a thorough Report and opined that this Court should dismiss the complaint in this case without prejudice and without issuance and service of process because Defendants are protected by judicial or quasi-judicial immunity. ECF No. 8. Objections to the Report were due on August 29, 2016; however, no objections were filed. ECF Nos. 8–11. On November 9, 2016, this Court issued an order adopting the Report, as modified. ECF No. 12.

On December 22, 2016, a notice of appeal was docketed. ECF No. 15. Due to the fact that Plaintiff did not file a motion for reconsideration nor notify this Court of his failure to

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<sup>1</sup> The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (D.S.C.). 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).

receive the Report prior to his notice of appeal, this Court was unable to address the issue and awaited the Fourth Circuit’s order and mandate.<sup>2</sup> On May 4, 2017, the Fourth Circuit issued an opinion; however, Plaintiff filed a petition for rehearing and subsequent filings so the mandate was not issued until July 18, 2017. ECF Nos. 24, 25; Docket No. 16-7764, Appellate ECF Nos. 21–33.

In his appeal, Plaintiff argued that this Court violated his “right to object to the report and recommendation.” ECF No. 15. In essence, Plaintiff asserts that he did not receive the Report and, thus, was not given an opportunity to object to it. Plaintiff appears to take issue with the statement made in this Court’s order ruling upon the Report, which stated, “The parties were advised of their right to object to the Report, which was entered on the docket on August 12, 2016. ECF Nos. 8, 9. The Magistrate Judge gave Plaintiff until August 29, 2016, to file objections. Id. However, no objections were filed to the Report.” ECF No. 12 at 2. The Court takes this opportunity to clarify that the language “[t]he parties were advised” is the standard language used in its orders to reflect that the deadline to make objections has been noted on the docket, as well as attached to the mailed Report.

In its order, the Fourth Circuit stated that it could not “conclusively determine whether [Plaintiff] received a copy of the [Report].” Thus, it vacated this Court’s decision and remanded the case for this Court to make the determination in the first instance. The Fourth Circuit instructed that, should this Court find Plaintiff’s claim credible, “it should provide him with a copy of the [Report] and afford him an opportunity to object.” ECF No. 24 at 2.

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<sup>2</sup> The Court notes that Plaintiff previously had a different case before this Court, Docket No. 1:16-cv-01676-JFA (D.S.C.), wherein he filed a motion for reconsideration notifying this Court that he had not received the report and recommendation. Docket No. 1:16-cv-01676-JFA (D.S.C.), ECF No. 29. Upon receiving his motion, the Court re-opened the case and vacated its prior order on that report and recommendation to allow him an opportunity to object. Id., ECF No. 30. Thus, had Plaintiff informed this Court of the alleged issue with the order in this case, the Court would have taken a similar position and allowed him an opportunity to object.

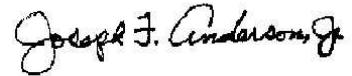
The Court has reviewed Plaintiff's informal brief filed in the Fourth Circuit, which states he was not advised of his right to object to the Report and contains a printout allegedly stating that Plaintiff did not receive mail during the months of July, August, September, October, or November 2016. Docket No. 16-7764, Appellate ECF No. 11. The Court takes judicial notice of appropriate materials. The docket in this case reflects that the Report, with the objection deadline, was mailed on August 12, 2016. ECF Nos. 8-9.

Thus, this Court determines it could be possible that the Report was not received by Plaintiff and, therefore, out of an abundance of caution, this Court hereby allows Plaintiff an opportunity to receive and object to the Report within fourteen (14) days after service of the Report. 28 U.S.C § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. (6)(a), (d).

The parties may file specific written objections to the Report by addressing specific portions of the Report to which the objections are made and the basis for such objections with the Clerk. “[I]n 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.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Specific written objections must be filed by the time period provided and failure to timely file specific written objections to the Report will result in waiver of the right to appeal from a judgment of this Court based upon such Report. See 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to mail a copy of the Report, with the objection notice, and this order to Petitioner forthwith.

**IT IS SO ORDERED.**



July 20, 2017  
Columbia, South Carolina

Joseph F. Anderson, Jr.  
United States District Judge