

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

David A. Duren, #181965, )  
Plaintiff, ) C/A No. 1:16-3002-MBS  
vs. )  
Joseph McFadden, Warden, Lieber )  
C.I.; and Daniel Gourley, Asst. )  
Attorney General, )  
Defendants. )  
\_\_\_\_\_  
)

**O R D E R**

Plaintiff David A. Duren is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at Lieber Correctional Institution in Ridgeville, South Carolina. Plaintiff, proceeding pro se and in forma pauperis, filed a complaint on September 1, 2016, alleging that Defendants violated his constitutional rights. See 42.U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling.

On September 6, 2016, the Magistrate Judge issued an order directing Plaintiff to bring his complaint into proper form by (1) fully completing the “Statement of Claim” section on his complaint form; (2) completing a summons form; and (3) completing a Form USM-285 for each Defendant. Plaintiff was cautioned that his failure to bring the case into proper form could result in the case being dismissed for failure to prosecute. See Fed. R. Civ. P. 41(b). Plaintiff filed no response to the Magistrate Judge’s order. On October 3, 2016, the Magistrate Judge issued a second proper form order. After Plaintiff did not respond, the Magistrate Judge issued a Report and Recommendation on October 31, 2016, in which she recommended that the case be dismissed

without prejudice for failure to prosecute. By order filed November 3, 2016, Plaintiff was granted an extension of time until December 19, 2016, to file objections to the Report and Recommendation. However, Plaintiff filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In 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, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. Plaintiff’s complaint is dismissed, *without prejudice*, pursuant to Rule 41(b) for failure to prosecute.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Senior United States District Judge

Columbia, South Carolina

January 18, 2017

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified of the right to appeal this order  
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**