



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

JAMES EDWARD BATTLE,
Plaintiff,

vs.

KENNY BOONE, SGT. PAGE, ERIC
MCDANIELS, and MARK ALTMAN,
Defendants.

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CIVIL ACTION 1:17-2156-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THIS CASE FOR FAILURE TO PROSECUTE WITH PREJUDICE**

Plaintiff filed this action under 42 U.S.C. § 1983. He is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting this lawsuit be dismissed with prejudice in accordance with Rule 41(b) of the Federal Rules of Civil Procedure based on Plaintiff’s failure to prosecute. The Report was made as per 28 U.S.C. § 636 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 the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (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 with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 19, 2017, but Plaintiff failed to file any objections.* “[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, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court this action is **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

IT IS SO ORDERED.

Signed this 5th day of October, 2017, in Columbia, South Carolina.

s/ Mary Geiger Lewis _____
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

*The Court notes the Post Office returned Plaintiff’s copy of the Report to the Clerk on October 2, 2017, marked “Released” and “RETURN TO SENDER[.]” ECF No. 19. Thus, the Court is well aware Plaintiff was unable to file objections to a Report he never received. Presented with Plaintiff’s failure to abide by the Magistrate Judge’s directive to keep the Court apprised of any address change coupled with the Court’s obligation to effectively and efficiently manage its docket, however, the Court is left with no option but to dismiss the action.