

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

Tony Middleton, #3666657,	)	
	)	C/A No. 1:17-2518-MBS
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
Ridgeland Correctional Institution, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Tony Middleton is a state prisoner in custody of the South Carolina Department of Corrections. Plaintiff currently is housed at Ridgeland Correctional Institution in Ridgeland, South Carolina. On September 18, 2017, Plaintiff, proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983, alleging that his constitutional rights were violated. 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 26, 2017, the Magistrate Judge issued a proper form order in which she directed Plaintiff to (1) complete, sign, and return a standard complaint form; (2) pay the \$350.00 filing fee or complete and sign an application to Proceed Without Prepayment of Fees and Affidavit; (3) complete and sign a Financial Certificate if required; (4) complete a summons form for each Defendant; and (4) complete, sign, and return a Form USM-235 for each Defendant. On October 20, 2017, the envelope containing the proper form order was returned to the Office of the Clerk of court marked “RETURN TO SENDER,” “REFUSED,” and “Inmate Refused to Sign.”

On October 20, 2017, the Magistrate Judge issued a Report and Recommendation in which she determined that, based on Plaintiff’s refusal to sign for and accept the proper form order, Plaintiff

did not intend to pursue the within action. Accordingly, the Magistrate Judge recommended that the complaint be dismissed, without prejudice, for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). The envelope containing the Report and Recommendation has not been returned to the Clerk of Court. Plaintiff filed no objections 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 of the Magistrate Judge and incorporates it herein by reference. The within action is dismissed without prejudice pursuant to Rule 41(b).

**IT IS SO ORDERED.**

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

Columbia, South Carolina

November 27, 2017