

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

| | | |
|--------------------------|---|-----------------------|
| Matthew Thomas Pickens, |) | C/A No. 2:08-3907-RBH |
| |) | |
| Petitioner, |) | |
| |) | ORDER |
| vs. |) | |
| |) | |
| Michael McCall "Warden", |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

The Plaintiff, *pro se*, instituted this action pursuant to 28 U.S.C. § 2254 on December 1, 2008. He is incarcerated in the SCDC at Perry Correctional Institution.

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 Robert S. Carr, for pretrial handling. The matter is before this Court on the Report and Recommendation of Magistrate Judge Carr, which was issued on June 30, 2009. After analyzing the issues presented in this case, the Magistrate Judge recommended that this Court dismiss the petition as to the 1988 convictions as untimely and as to the 2005 conviction for lack of jurisdiction and all other motions be denied as moot. The petitioner filed a document entitled "Motion for Leave of Court" on July 14, 2009. Other than filing this document, he has not filed any objections to the Report.

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. *Mathews v. Weber*, 423 U.S. 261 (1976). 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. 28 U.S.C. § 636(b)(1).

The Plaintiff filed no objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). As indicated above, the plaintiff has filed a motion in which he "request this Honorable Court to grant him leave of court to pursue 2244 on his 1988 convictions." (Docket Entry #58).

The Magistrate found that any challenge to the 1988 convictions is untimely, and the petitioner has not objected to this finding. Instead, he has filed a motion requesting this Court to grant him permission to file a successive habeas petition as to the 1988 convictions. However, this Court lacks authority to grant Petitioner such relief. Under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), a petitioner who seeks to file a successive § 2254 petition must first obtain authorization from the United States Court of Appeals for the district court to consider the petition. ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 29 U.S.C. § 2244(b)(3)(A).) In filing the motion before the Court, the petitioner seemingly indicates that he has not obtained the requisite approval from the Fourth Circuit

Court of Appeals. Under the statute, this Court lacks authority to grant such relief. Therefore, the motion is denied.

Petitioner has asserted no actual objections to the Magistrate's Report. The Court has reviewed the Petition, Report and Recommendation by the Magistrate Judge, the applicable law, and the petitioner's motion. On the basis of the authorities cited by the Magistrate Judge and this Court's review of the record and applicable law, the Court adopts the Report of the Magistrate Judge as modified by this Order. The Motion to allow a successive petition is denied, as this court lacks authority to act upon such a motion. The portion of the case regarding the 1988 convictions is dismissed without prejudice to the petitioner's right to seek permission from the Fourth Circuit Court of Appeals to file a successive petition. The petitioner's challenge to the 2005 conviction is dismissed with prejudice, and the motion for summary judgment is granted as to that portion of the petitioner's complaint.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

July 28, 2009
Florence, South Carolina