



### **Standard of Review**

The Magistrate Judge makes only a recommendation to the 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, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the R&R 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 Court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the Court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the Court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982). In the absence of a timely filed specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

### **Discussion**

In his objections, the Plaintiff states that he "is not asking for monetary damages for imprisonment. The monetary damages which the Plaintiff seeks is solely for the claim the State made on a affidavit on 5/29/03, which stated the Plaintiff violated one of their private laws." *Objections*, p.1. Moreover, the Plaintiff claims that a contract with the State is a prerequisite to be found guilty of violating state law. *Id.* The Court disagrees.

Despite his claims to the contrary, the Plaintiff is requesting monetary damages for "unconstitutional conviction or imprisonment, or for other harm whose unlawfulness would render a conviction or sentence invalid." *Heck v. Humphrey*, 512 U.S. 477, 486 (1994). The Supreme

Court has held that in order to recover damages for imprisonment in violation of the Constitution, a plaintiff must first successfully challenge the imprisonment. *Id.* at 487. Further, release from prison is not a remedy available under 42 U.S.C. § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Wilson v. Johnson*, 535 F.3d 262, 265 (4th Cir. 2008) (“[W]hen a plaintiff’s claims challenge ‘the lawfulness of conviction or confinement,’ they are simply not ‘cognizable as § 1983 claims’” (quoting *Heck*, 512 U.S. at 483-86)). In fact, habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate release. *Preiser*, 411 U.S. at 500.

In the instant matter, a favorable judgment would necessarily imply the invalidity of the Plaintiff’s conviction, and the Plaintiff has not demonstrated or alleged that he has successfully challenged the lawfulness of his state court conviction. The Plaintiff has failed to show that his conviction has been reversed, expunged, invalidated or impugned by the grant of a writ of habeas corpus. *Heck*, 512 U.S. at 487. Thus, the Complaint is dismissed for failure to state a claim on which relief may be granted.

### **Conclusion**

Based on the foregoing, it is **ORDERED** that the Magistrate Judge’s R&R is adopted and incorporated herein by reference, and this case is **DISMISSED** *without prejudice* and without issuance and service of process.

**IT IS SO ORDERED.**

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

Florence, South Carolina  
September 20, 2010