

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

Raymond Magazine,)
Petitioner,) Civil Action No.: 2-12-cv-03432-TLW
v.)
Warden of Broad River Correctional)
Institution,)
Respondent.)

)

ORDER

Petitioner, Raymond Magazine (“petitioner”), filed the above-captioned action, which the Court construed as seeking relief pursuant to 28 U.S.C. § 2254, on December 5, 2012. (Doc. #1).

This matter now comes before this Court for review of the Report and Recommendations (“the Report”) filed on January 10, 2013 by United States Magistrate Judge Bruce Howe Hendricks, to whom this case had previously been assigned. (Doc. #12). In the Report, the Magistrate Judge recommends that the District Court dismiss the § 2254 petition without prejudice and without requiring Respondent to file an answer or return. (Doc. #12). The petitioner filed objections to the report on February 1, 2013. (Doc. #19).

This Court is charged with conducting a de novo review of any portion of the Magistrate Judge’s Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C. § 636. In conducting this review, the Court applies the following standard:

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. 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.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, *de novo*, the Report and the petitioner's objections thereto. After careful consideration of the Report and objections, this Court **ACCEPTS** the Magistrate Judge's Report and Recommendation (Doc. #12). Therefore, for the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that petitioner's § 2254 petition is **DISMISSED** without prejudice and without requiring Respondent to file an answer or return.

The Court has reviewed the petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a Certificate of Appealability as to the issues raised herein. Petitioner is advised that he may seek a Certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

February 7, 2013
Columbia, South Carolina