

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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|--|---|---------------------------|
| Robert Anthony Hawkins, |) | C/A No. 2:12-3502-JFA-BHH |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| Turbeville Correctional Institution; A. Warden |) | |
| Cothran; Investigator Carter; Allendale |) | |
| Correctional Institution; Jasper Woods; Lee |) | |
| Correctional Institution; Officer McDowell; |) | |
| Major Chavoila; and Warden Knowlin, |) | |
| |) | |
| Defendants. |) | |
| |) | |

The *pro se* plaintiff, Robert Anthony Hawkins, is a state inmate with the South Carolina Department of Corrections. He brings this action pursuant to 42 U.S.C. § 1983¹ claiming that the defendants were deliberately indifferent to the plaintiff after he was attacked by other inmates. The plaintiff seeks compensatory damages and injunctive relief.

The Magistrate Judge assigned to this action² has prepared a Report and Recommendation and opines that defendants Turbeville Correctional Institution, Allendale Correctional Institution, and Lee Correctional Institution should be summarily dismissed because the complaint fails to state a claim under § 1983 against them. The Magistrate

¹ The plaintiff has filed this action *in forma pauperis* under 28 U.S.C. § 1915.

² The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation 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 to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

Judge also recommends dismissal of defendant Jasper Woods, a fellow inmate, because Woods did not act under color of state law. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on May 6, 2013. The plaintiff filed objections to the Report wherein he asks the court to file his original complaint as his only complaint. He also contends that his December 12, 2012 letter to the court should be construed as a motion for a temporary restraining order. The court finds the objections without merit and as such, the objections are overruled.

As the Magistrate Judge properly suggests, and this court agrees, defendants Turbeville Correctional Institution, Allendale Correctional Institution, and Lee Correctional Institution should be summarily dismissed because they are institutions and not “persons” subject to suit in a § 1983 claim. Additionally, defendant Jasper Woods is a fellow inmate and the complaint fails to allege that he acted under color of state law when he allegedly injured the plaintiff.

The Magistrate Judge also recommends that the plaintiff’s motion for a preliminary injunction be denied. The Magistrate Judge has carefully considered the four-part test set out in *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) and opines that the plaintiff has not made a clear showing that he is likely to succeed on the merits of his amended complaint; the plaintiff does not make any factual allegations that he is currently threatened with imminent injury, loss or damage; the plaintiff cannot show the balance of equities tip in his favor; and the plaintiff cannot show that a preliminary injunction is in the

public interest. This court agrees, and accordingly, the plaintiff's motion for a preliminary injunction is denied.

After a careful review of the record, the applicable law, the Report and Recommendation and the objections thereto, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, defendants Turbeville Correctional Institution, Allendale Correctional Institution, Lee Correctional Institution, and Jasper Woods are dismissed from this action.

As the Magistrate Judge has authorized service of the complaint on the remaining defendants, this matter shall be returned to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

June 4, 2013
Columbia, South Carolina