

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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Demetrius Jarod Smalls,)
Plaintiff,) No. 2:15-cv-2510-RMG DISTRICT COURT
vs.) DISTRICT OF SOUTH CAROLINA
Defendants.) 10/14/2015

ORDER

This matter comes before the Court on the Report and Recommendation (R & R) of the Magistrate Judge (Dkt. No. 23), recommending that this action be summarily dismissed as frivolous and failing to state a claim. Plaintiff filed objections to the R & R. (Dkt. No. 25).

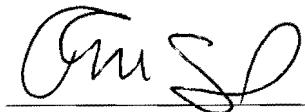
The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court is charged with making a de novo determination of those portions of the R & R or specified proposed findings or recommendations to which objection is made. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting 28 U.S.C. § 636(b)(1)); *accord* Fed. R. Civ. P. 72(b). However, as to portions of the R & R to which no objection is made, this Court “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) (quoting Fed. R. Civ. P 72 advisory committee note). Additionally, the Court need not give any explanation for adopting the R & R in the absence of

specific objections by the parties. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983) (“Absent objection, we do not believe that any explanation need be given for adopting the report.”).

Pro se complaints are construed liberally to allow the development of meritorious claims. *See, e.g., Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978) (“[A] complaint, especially a *pro se* complaint, should not be dismissed summarily unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief”) (internal quotations omitted). However, the requirement of a liberal construction does not mean that the Court can ignore a plaintiff’s clear failure to allege facts that set forth a cognizable claim. *See Well v. Dep’t of Soc. Servs. for City of Baltimore*, 901 F.2d 387, 391 (4th Cir. 1990) (“The special judicial solicitude with which a district court should view *pro se* complaints does not transform the court into an advocate.”). Furthermore, the Court must dismiss an *in forma pauperis* action *sua sponte* if the claim is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989).

Plaintiff has brought this civil action alleging malfeasance by Defendants in their state criminal prosecution of Plaintiff. The Magistrate Judge ably and thoroughly addressed each of Plaintiff’s claims and found them to be frivolous and fail to state a claim. Plaintiff’s objections simply reargue the very same points already presented to and rejected by the Magistrate Judge. The Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 23) as the order of the Court and **SUMMARILY DISMISSES** this action as frivolous and failing to state a claim upon which relief may be granted.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

October 14, 2015
Charleston, South Carolina