

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

Samuel Wilder, #258295,

C/A. No. 2:17-763-CMC-MGB

Plaintiff

v.

William F. Krebs,

Opinion and Order

Defendant.

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983. ECF No. 1.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation ("Report"). On March 28, 2017 the Magistrate Judge issued a Report recommending that Plaintiff's complaint be dismissed without prejudice and without issuance and service of process. ECF No. 8. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. After an extension of time, Plaintiff filed objections to the Report on April 19, 2017. ECF No. 14.

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. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made

by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b).

The Report recommends dismissal based on *res judicata* and because Plaintiff's complaint fails to "state a plausible Eighth Amendment claim for deliberate indifference to serious medical needs." ECF No. 8. Plaintiff objects to both recommendations (ECF No. 14), and has filed a motion to amend pleadings (ECF No. 13).

The motion to amend pleadings is granted. Further, after reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court declines to adopt the Report. Plaintiff's proposed amendment and objections raise factual issues regarding his deliberate indifference claim which preclude dismissal prior to issuance and service of process. The court also declines to adopt the *res judicata* portion of the Report because the record is unclear whether dismissal of the previous state case was on the merits.

Therefore, this matter will not be dismissed at this time. Plaintiff is directed to file an Amended Complaint no later than May 29, 2017, containing the language in his motion to amend pleadings. Thereafter, the matter shall be referred back to the Magistrate Judge for issuance of a service order and further proceedings as appropriate.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
May 4, 2017