

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

Shawn Davis, #342092,)
)
Petitioner,)
)
vs.)
)
Michael Stephan,)
)
Respondent.)
_____)

Case No.: 2:21-cv-00717-JD-MGB

OPINION & ORDER

This matter is before the Court with the Report and Recommendation of United States Magistrate Mary Gordon Baker (“Report and Recommendation”), made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ Petitioner Shawn Davis (“Davis” or “Petitioner”), proceeding *pro se*, brought this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 against Respondent Michael Stephan (“Stephen” or “Respondent”), claiming that he was “denied [the] right to self-representation” after requesting to “be relieved of counsel.” (DE 1, p. 6.) Petitioner asserts that this “constitutional” violation resulted in a “fundamental miscarriage of justice” and requests “vacation of the lower court ruling.” (DE 1, pp. 6-7.)

On August 4, 2010, Petitioner was found guilty of armed robbery by a Hampton County jury and sentenced to thirty years imprisonment. Davis then filed an application for post-conviction relief (“PCR”) on August 8, 2011, alleging ineffective assistance of counsel and prosecutorial

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See 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 Report and Recommendation to which 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 with instructions. 28 U.S.C. § 636(b)(1).

misconduct, among other things. (See Case No. 2011-CP-25-00320.) Following an evidentiary hearing on August 28, 2013, the circuit court denied Petitioner’s application by order dated November 7, 2013. The South Carolina Supreme Court then dismissed Petitioner’s subsequent appeal on August 7, 2014.

On October 2, 2014, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging ineffective assistance of counsel and abuse of discretion by the trial court and PCR court judges. (See Case No. 2:14-cv-03850-DCN-MGB.) Finally, on May 15, 2015, the Court dismissed Petitioner’s habeas action with prejudice for lack of prosecution and failure to comply with an order of the Court pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Court later denied Petitioner’s motions for a certificate of appealability, as did the Fourth Circuit Court of Appeals. (See App. Case No. 17-6101.)

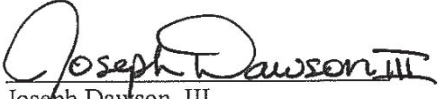
The Report and Recommendation was issued on September 17, 2021, finding that the Court lacks jurisdiction over the petition and, therefore, recommending that this case be summarily dismissed without prejudice and without requiring Respondent to file a return. (DE 13.)

No objections to the Report and Recommendation were filed. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The 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).

Upon review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein by reference.

It is, therefore, **ORDERED** that Davis' Petition for Writ of Habeas Corpus is dismissed without prejudice and without requiring Respondent to file a return. Further, it is **ORDERED** that a certificate of appealability is denied because Petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.


Joseph Dawson, III
United States District Judge

Greenville, South Carolina
December 10, 2021

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.