

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

Fernando Javier Wright,

Plaintiff,

v.

Deputy Chief Franklin Rocky Burke, Jr.
and Folly Beach Department of Public
Safety (D.P.S.),

Defendants.

Civil Action No. 2:23-cv-00159-RMG

ORDER AND OPINION

Before the Court is the Report & Recommendation (“R&R”) of the Magistrate Judge recommending that this action be dismissed for lack of prosecution. (Dkt. No. 24). For the reasons set forth below, the Court adopts the R&R as the order of the Court and dismisses this action pursuant to FED. R. CIV. P. 41(b).

As detailed in the R&R, Plaintiff, proceeding *pro se*, brought this case pursuant to 42 U.S.C. § 1983. On April 5, 2023, the Magistrate Judge issued a Proper Form Order, advising Plaintiff to bring his case in the proper form and that he must “always keep the Clerk of Court advised **in writing** . . . if [his] address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you.” (Dkt. No. 6 at 2) (emphasis in original).

On June 1, 2023, Defendants moved to dismiss Plaintiff’s complaint for failure to state a claim. (Dkt. No. 17). On June 2, 2023, the Magistrate Judge issued a *Roseboro* order advising Plaintiff of the dismissal procedures and the consequences if he failed to adequately respond to Defendants’ motion. (Dkt. No. 20). “The *Roseboro* order was returned as undeliverable on June 14, 2023, with a note indicating that Plaintiff had been released from the detention center on April 21, 2023.” (Dkt. No. 24 at 2). The deadline for Plaintiff to respond to Defendants’ motion was

July 3, 2023. Accordingly, the Magistrate Judge recommends dismissing this action for lack of prosecution. (*Id.*).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). Because Plaintiff did not file objections to the R&R, it is reviewed for clear error.

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded, under the pertinent case law, that Plaintiff’s case should be dismissed pursuant to Rule 41(b) for failure to prosecute and failure to comply with the Court’s orders. *See Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989).

Accordingly, the Court adopts the R&R (Dkt. No. 24) as the order of the Court and dismisses this action pursuant to Fed. R. Civ. P. 41(b).

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard M. Gergel
United States District Judge

August 16, 2023
Charleston, South Carolina