

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

Francisco Javier Naranjo, #317604,)	C/A No.: 3:10-2041-JFA-JRM
)	
Petitioner,)	
vs.)	O R D E R
)	
Warden, Kershaw Correctional Institution,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Francisco Javier Naranjo, initiated this action pursuant to 28 U.S.C. § 2254 contending that he is falsely imprisoned.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this action should be dismissed without prejudice because the petitioner has failed to exhaust his state court remedies. Specifically, the petitioner has not alleged any grounds for habeas relief. The Magistrate Judge also notes that this is petitioner’s second attempt at federal review of his state convictions. His first habeas petition, filed December 22, 2009, was summarily dismissed without prejudice on March 16, 2010 for failure to exhaust his state court remedies (C/A No. 3:09-3238-RBH). An appeal of that order dismissing petition is now pending (4CCA No. 10-6957).

¹ 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 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. 28 U.S.C. § 636(b)(1).

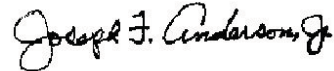
The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on November 18, 2010. The petitioner did not file objections to the Report. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper and the Report is incorporated herein by reference.

Accordingly, this action is dismissed without prejudice and without issuance and service of process.² The petitioner's motion for appointment of counsel is moot.

IT IS SO ORDERED.

January 5, 2011
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

² On December 1, 2009, the Rules governing Section 2254 and 2255 cases in the United States District Courts were amended to require that the district court issue or deny a certificate of appealability when a final ruling on a habeas petition is issued. See Rule 11(a) of the Rules governing 28 U.S.C. § 2254 and 2255. The court has reviewed its order and pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 cases, declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).