

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

Kantwan K. Garner,

Civil Action No. 3:17-cv-348-CMC

Plaintiff,

vs.

ORDER

Richland County Sheriff Department,
Defendant.

This matter is before the court on Plaintiff's complaint alleging that he was held in jail for twenty-seven months on false charges, denied a speedy trial, and the charges remained on his record until 2015, well past the February 2008 date by which he alleges the charges were to be tried or dismissed.¹ ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report") on dispositive issues. On March 6, 2017, the Magistrate Judge issued a Report recommending that this matter be summarily dismissed without prejudice, and without issuance and service of process based on immunity. ECF No. 8. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if they failed to do so. Plaintiff filed objections to the Report on March 23, 2017. ECF No. 10.

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

¹ Plaintiff filed a previous suit with the same factual allegations against the State of South Carolina on September 13, 2016. *See Garner v. State of South Carolina*, No. 3:16-cv-03095. That suit was dismissed based on Eleventh Amendment immunity on November 9, 2016.

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).

After considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge and Plaintiff's objections, the court agrees with the Report's recommendation that the complaint should be dismissed. Plaintiff has brought suit against the Richland County Sheriff Department, which is immune from suit under the Eleventh Amendment. In his objections, Plaintiff lists the defendant as "Marcus Brown of the Richland County Sheriff Department The Burglar Division." ECF No. 10. However, his complaint lists the defendant only as "Richland County Sheriff Department." Plaintiff has made no motion to amend his complaint to add or substitute an individual defendant. The Sheriff's Department is an agency of the State and as such is immune. Additionally, as recognized by the Magistrate Judge, the Sheriff's Department is not a "person" amenable to suit under § 1983. Accordingly, the court adopts the Report by reference in this Order. Plaintiff's Complaint is hereby dismissed without prejudice.

IT IS SO ORDERED.

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

Columbia, South Carolina
March 29, 2017