

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

Kantwan Kinte Garner,

Civil Action No. 3:17-cv-1268-CMC

Plaintiff,

vs.

ORDER

Marcus Brown of Richland County Sheriff
Department,

Defendant.

This matter is before the court on Plaintiff's complaint alleging 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 June 14, 2017, the Magistrate Judge issued a Report recommending this matter be summarily dismissed without prejudice, and without issuance and service of process. ECF No. 9. 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 July 10, 2017. ECF No. 13.

¹ Plaintiff filed two previous suits with the same factual allegations against the State of South Carolina and the Richland County Sherriff's Department. *See Garner v. State of South Carolina*, No. 3:16-cv-03095; *Garner v. Richland County Sherriff Department*, No. 3:16-cv-00348. Those suits were dismissed based on Eleventh Amendment immunity.

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).

After conducting a de novo review of 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's complaint does not contain necessary factual information about his criminal case in Richland County, such as: when he was arrested, when he was released, whether the charges were dropped and if so, when, whether he asserted his right to a speedy trial during that prosecution, his charges, the circumstances of his arrest, or even the criminal case number. In his objections, Plaintiff states "the details are clear cut, I was falsely arrested knowingly just because of word of mouth in statements that don't match and states [sic] of the people who did the crime clearly stating they don't know me caught on the seen at the time of the crime." ECF No. 13. There are a few facts such as the case was before Judge Thomas in November of 2007, but this is not sufficient to determine anything further regarding the criminal case. Therefore, there are insufficient facts to adequately plead his claims of false imprisonment and violation of speedy trial requirements under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), which require sufficient factual

matter and more than conclusory statements. 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
July 18, 2017