

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

Barry Hathaway,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 4:08-00491-TLW-TER
)	
John R. Owen, Warden,)	
)	
Respondent.)	
_____)	

ORDER

Petitioner, Barry Hathaway (“petitioner”), brought this civil action, *pro se*, pursuant to 42 U.S.C. § 2241 on February 13, 2008. (Doc. #1).

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III., to whom this case had previously been assigned. (Doc. #24). In the Report, the Magistrate Judge recommends that the District Court dismiss the petition for the petitioner’s failure to prosecute under Fed. R. Civ. P. 41(b). (Doc. #24). The petitioner then filed a Motion for Extension of Time to file a response. (Doc. #31). This Motion for an Extension of Time was granted by this Court on October 23, 2008. (Doc. #33). The petitioner then filed a document captioned “Plaintiff’s Response to Defendant’s Motion to Dismiss and Report and Recommendation.” (Doc. #35). This Court will consider this document as a “Response” to the defendant’s Motion to Dismiss. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or

specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the supplemental filings of the petitioner. Now that the petitioner has filed a “Response” to the Motion to Dismiss, the case is hereby remanded to the Magistrate Judge for consideration of the “Response” and preparation of a Report and Recommendation regarding the Motion to Dismiss.

IT IS SO ORDERED.

s/Terry L. Wooten
United States District Judge

December 22, 2008
Florence, South Carolina