

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

Samuel Lee Gourdine,)	
)	C/A No. 4:10-2828-MBS-TER
Plaintiff,)	
)	
vs.)	
)	O R D E R
Scarlett A. Wilson, Bryan A. Alfaro, and)	
Gerald McElvougue, Captain,)	
)	
Defendants.)	
_____)	

Plaintiff Samuel Lee Gourdine currently is a pre-trial detainee at the Berkeley County Detention Center in Moncks Corner, South Carolina, where he alleges he has been held on armed robbery charges since the fall of 2009. Defendant McElvougue “should be the person responsible for all consequences following this suit.” Complaint 3 (ECF No. 1). Defendants Wilson and Alfaro are state solicitors who “are the sole persons who hold authority to bring justice correctly[.]” Plaintiff, proceeding pro se, filed a complaint on November 4, 2010, alleging that the conditions of his confinement amount to cruel and unusual punishment. Thus, Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A. On May 16, 2011, the Magistrate Judge issued a Report and Recommendation in which he determined, among other things, that Plaintiff’s complaint failed to state a claim against Defendants Wilson and Alfaro because these Defendants are entitled to prosecutorial immunity. Accordingly, the Magistrate Judge recommended that these Defendants be summarily dismissed. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation 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 may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, 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.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons stated hereinabove and in the Report and Recommendation, Defendants Wilson and Alfaro are dismissed, without prejudice and without issuance and service of process. The within action is recommitted to the Magistrate Judge for further pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 20, 2011