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

Joseph Martin Swaringen, Plaintiff, v. Sgt. Rosier, Lt. Mathis, Major Stowers, Mr. Scotty Bodiford, Mr. Israel Hollister, Director Vandermosten, and Greenville Co. Detention Center, Defendants.	Civil Action No.: 4:16-cv-02838-RBH **ORDER**

Plaintiff Joseph Martin Swaringen, proceeding pro se,[1] filed this action pursuant to 42 U.S.C. § 1983 against the above-captioned Defendants. *See* ECF No. 1. The matter is before the Court for review of the Report and Recommendation ("R & R") of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 for the District of South Carolina.[2] *See* R & R, ECF No. 14. The Magistrate Judge recommends that the Court summarily dismiss Plaintiff's complaint without prejudice and without issuance and service of process. R & R at 8-9.

Standard of Review

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge's

[1] Plaintiff was a pretrial detainee confined at the Greenville County Detention Center when he filed his complaint. *See* ECF No. 1 at 2. After the Magistrate Judge issued the R & R, Plaintiff submitted a change of address indicating he was no longer in jail. *See* ECF No. 16.

[2] The Magistrate Judge reviewed Plaintiff's complaint pursuant to the screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A. The Court is mindful of its duty to liberally construe the pleadings of pro se litigants. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). *But see Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) ("Principles requiring generous construction of pro se complaints are not, however, without limits. *Gordon* directs district courts to construe pro se complaints liberally. It does not require those courts to conjure up questions never squarely presented to them.").

recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Court must engage in a de novo review of every portion of the Magistrate Judge's report to which objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate [Judge]'s proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge's recommendation. *Camby v. Davis*, 718 F.2d 198, 199-200 (4th Cir. 1983).

Discussion[3]

In his complaint, Plaintiff alleges that "within 24 hours of [his] arrest," Defendant Rosier placed him "in lock up for 72 hours" and additionally placed him "on 'administrative separation'" in the Greenville County Detention Center. ECF No. 1 at 5; ECF No. 1-1 at 4-5. Plaintiff claims Defendant Rosier's actions "impeded" and "denied" him of his "right to counsel" because he was "not allowed to call counsel prior to [his] bond hearing." *Id.* The Magistrate Judge recommends summarily dismissing Plaintiff's complaint because it fails to state a plausible claim against the named Defendants. R & R

[3] The R & R contains a full summary of the procedural and factual history of this case, as well as the applicable legal standards.

at 3, 8-9. Of relevance here, the Magistrate Judge notes Plaintiff's apparent claim that Defendant Rosier deprived him of his Sixth Amendment right to counsel. *Id.* at 1, 4-6 ("Plaintiff fails to plead facts indicating the attachment of his Sixth Amendment right to counsel prior to his bond hearing.").

Initially, the Court notes Plaintiff has not filed objections to the R & R or otherwise challenged the Magistrate Judge's interpretation of the allegations in his complaint. *See Diamond*, 416 F.3d at 315 (stating a district court need only review the magistrate judge's R & R for clear error in the absence of specific objections).

Plaintiff has, however, filed a motion to amend his complaint. *See* ECF No. 22. He states he "is a lay person st[r]uggling with the proper presentation of his claim," asserting:

> **The denial of access to counsel in a timely manner prior to the bond hearing** did constitute a denial of due process. The Plaintiff was denied his right to counsel at an adversarial hearing which resulted in the loss of liberty. Furthermore, **the Plaintiff was denied access to counsel at a very critical time – immediately following arrest** when critical exculpatory evidence was lost – all while agents of the state were seeking to preserve inculpatory evidence. ANY action which inhibits an accused person[']s timely access to counsel violates that person[']s Due Process rights.

Id. at 1 (emphases added). Plaintiff further asserts, "The actual injury in this being the denial of bail and the loss of his ability to present an effective defense due to the loss of critical exculpatory evidence." *Id.* at 2. Based on his motion to amend, it appears Plaintiff is addressing his claim regarding the denial of access to counsel.[4]

Having reviewed the factual allegations in Plaintiff's complaint and motion to amend, the Court finds amendment of Plaintiff's complaint would be futile. As the Magistrate Judge explains in the R

[4] Plaintiff does not challenge or address any other portion of the R & R. Having reviewed the R & R for clear error, the Court agrees with the Magistrate Judge that this action must be summarily dismissed. *See Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 199-200.

& R, the Sixth Amendment "right to counsel attaches ***only at or after*** the initiation of adversary judicial proceedings against the defendant." *United States v. Gouveia*, 467 U.S. 180, 187 (1984) (emphasis added); *see also Rothgery v. Gillespie Cty.*, 554 U.S. 191, 198, 208-09 (2008) (discussing *Gouveia* and explaining "initiation of adversary judicial criminal proceedings" means "by way of formal charge, preliminary hearing, indictment, information, or arraignment"). Based on his motion to amend, Plaintiff apparently believes his right to counsel attached immediately ***after*** *his arrest and* ***before*** *the bond hearing* while he was in jail. This belief is incorrect. *See Gouveia*, 467 U.S. at 190 ("[W]e have never held that the right to counsel attaches at the time of arrest."); *United States v. Alvarado*, 440 F.3d 191, 200 (4th Cir. 2006) ("[T]he right to counsel does not attach immediately after arrest and prior to arraignment.").

At best, Plaintiff's right to counsel attached "only at or after the" bond hearing. *See Gouveia*, 467 U.S. at 187; *State v. Wilder*, 306 S.C. 535, 538, 413 S.E.2d 323, 324 (1991) ("Wilder's sixth amendment right to counsel attached at the initial bond hearing . . . ."). His right to counsel did not attach earlier at the time of his arrest and immediate confinement in jail, so he cannot claim Defendant Rosier deprived him of any such right by placing him in isolated confinement *before* the bond hearing.[5] *See, e.g.*, *Gouveia*, 467 U.S. at 192 ("We conclude that the Court of Appeals was wrong in holding that respondents were constitutionally entitled to the appointment of counsel while they were in administrative segregation and before any adversary judicial proceedings had been initiated against them."); *Allen v. Ballard*, No. CIV.A. 1:06-0597, 2009 WL 669273, at *30 (S.D.W. Va. Mar. 11, 2009) (finding the petitioner's "Sixth Amendment right to counsel did not attach at [the] time of his arrest . . . , which was prior to his presentment before the magistrate judge"). Accordingly, Plaintiff's proposed

[5] Plaintiff does not allege he had actually retained or been appointed an attorney before the bond hearing

amendment would be futile and the Court must deny his motion to amend. *See Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 379 (4th Cir. 2012) (stating a court should deny a request to amend if amendment would be futile).

Conclusion

The Court has thoroughly reviewed the entire record, including Plaintiff's complaint, the R & R, and Plaintiff's motion to amend. *See* ECF Nos. 1, 14, & 22. For the reasons stated in this Order and in the R & R, the Court adopts and incorporates the R & R [ECF No. 14] by reference, **DENIES** Plaintiff's motion to amend his complaint [ECF No. 22], and **DISMISSES** this action *without prejudice and without issuance and service of process*.

IT IS SO ORDERED.

Florence, South Carolina
April 3, 2017

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge