

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

Robert Lee,)	Civil Action No.: 4:16-cv-02988-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Mr. Kenny Boone, F.C.S.O.; and)	
Mr. Wayne Bird, F.C.S.O,)	
)	
Defendants.)	
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Plaintiff Robert Lee, proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983 against the two 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.¹ *See* R & R, ECF No. 9. The Magistrate Judge recommends that the Court summarily dismiss Plaintiff’s complaint without prejudice and without issuance and service of process. R & R at 1, 6. Plaintiff filed timely objections to the R & R as well as a motion to amend. *See* ECF Nos. 12 & 13.

Standard of Review

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

¹ 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.”).

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).

Discussion²

In his complaint, Plaintiff alleges the Florence County Police Department arrested him on July 4, 2016, at 501 East Pine Street in Florence, South Carolina, questioned him at the Florence City-County Complex, and took him to the Darlington County Detention Center. *See* ECF No. 1 at 6-8. He claims he has not been served with a warrant and requests the Court to grant the following relief: "order the State to give me due process. Follow rules of law when probable cause hearing and warrant has [*sic*] not been served within the required time[.]" *Id.* at 5-6, 9. The Magistrate Judge recommends summarily dismissing Plaintiff's complaint because he fails to state a plausible claim against the two named defendants: Kenny Boone (the sheriff of Florence County) and Wayne Byrd (the former sheriff

² The R & R contains a full summary of the procedural and factual history of this case, as well as the applicable legal standards.

of Darlington County). R & R at 3. Significantly, the Magistrate Judge takes judicial notice that the Darlington County Public Index indicates that Plaintiff's offenses arose in Darlington County for four charges of forgery, value less than \$10,000, and that bond was set at \$10,000 for each charge by the Honorable Daniel B. Causey, III (a municipal judge in Darlington).³ R & R at 4.

Plaintiff has filed objections to the R & R as well as a separate motion to amend his complaint. *See* ECF Nos. 12 & 13. In these filings, he seeks to supplement the factual allegations in his complaint and add two new defendants to this action. However, the Court notes the Darlington County Public Index indicates that Plaintiff's four forgery charges were disposed of on October 19, 2016, that he pled guilty to each charge in the Court of General Sessions for Darlington County before the Honorable Steven H. John, and that he received concurrent one-year prison sentences for three charges and time-served credit for the fourth charge. *See State of South Carolina v. Robert Lee*, available at <http://publicindex.sccourts.org/Darlington/PublicIndex/PISearch.aspx> (indictment numbers 2016GS1601518, 2016GS1601519, 2016GS1601520, and 2016GS1601521). Additionally, after he filed his objections and motion to amend, Plaintiff filed a notice of change of address indicating he "went to court in Darlington County" in October 2016 and "was shipped to the Department of Corrections" on October 24, 2016. *See* ECF No. 17.

Given Plaintiff's criminal convictions, the Court finds the Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), bars Plaintiff's claims because success on them would necessarily imply the invalidity of his forgery convictions and sentences, which have not been overturned or otherwise called into question. *See Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (explaining that

³ Plaintiff does ***not*** object to the Magistrate Judge's consideration of the public records indicating his pending charges.

under *Heck* and related cases, “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration”); *Edwards v. Balisok*, 520 U.S. 641, 646 (1997) (extending *Heck* to civil rights actions that do not directly challenge confinement, but instead contest procedures which necessarily imply unlawful confinement); *Young v. Nickols*, 413 F.3d 416, 417 (4th Cir. 2005) (“*Heck* . . . bars a prisoner’s § 1983 claim if the relief sought necessarily implies the invalidity of his criminal judgment.”). Under *Heck* and its progeny, the Court cannot grant Plaintiff the relief he seeks (i.e., ordering the State of South Carolina to give him due process and finding an arrest warrant was not timely served). *See, e.g., Mayfield v. King*, No. CA 0:10-1487-JFA-PJG, 2010 WL 4929124, at *1 (D.S.C. Nov. 30, 2010) (finding *Heck* barred Plaintiff’s § 1983 action alleging “that the defendants have violated his due process rights and that he has been maliciously and falsely imprisoned”). Accordingly, the Court must overrule Plaintiff’s objections, deny his motion to amend his complaint,⁴ and dismiss this action.

Conclusion

The Court has thoroughly reviewed the entire record, including Plaintiff’s complaint, the R & R, and Plaintiff’s objections and motion to amend. *See* ECF Nos. 1, 9, 12, & 13. For the reasons stated in this Order and in the R & R, the Court overrules Plaintiff’s objections, adopts and incorporates the R & R [ECF No. 9] by reference, **DENIES** Plaintiff’s motion to amend his complaint [ECF No. 13], and **DISMISSES** this action *without prejudice and without issuance and service of process*.

⁴ *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).

IT IS SO ORDERED.

Florence, South Carolina
April 3, 2017

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