

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

Darren S. Simmons,)
)
 Plaintiff,)
)
 v.)
)
 William R. Byars, Jr., Agency Director;)
 Thomas E. Bryne, MD; John B. McRee,)
 MD; Doctor Moore, MD; Janine Wresicics,)
 RN; Terry L. Andrews, RN; Ms. P. Derrick,)
 RN; Alicia Jones, RN; Nurse Ms. Spallden,)
 RN; Mr. Ofc. Corely; Mr. Ofc. Washington;)
 Mr. Ofc. Smart; Sgt. Creech; Corporal)
 Hughes; Ms. Ofc. Aldrich; Warden John)
 M. Pate; A/W Newton; Major Worrick; Ms.)
 Cindy Sanders, Admin. Assistance; John)
 H. Carmichael, Jr.; Lt. Bishop; Sgt. Gilbert;)
 Ms. Pam Smith; IGC Ann Hallman,)
 Grievance Branch Chief; Mr. Sgt. DeLoach;)
 Lt. Morrison; and South Carolina)
 Department of Corrections,)
)
 Defendants.)
 _____)

C/A No. 5:13-644-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending the Court partially dismiss this action pursuant to 28 U.S.C. § 1915. (Dkt. No. 29). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Darren S. Simmons (“Plaintiff”), a pro se state prisoner proceeding in forma pauperis under 28 U.S.C. § 1915, brings this action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC, this matter was referred to a Magistrate Judge for all pretrial proceedings. The Magistrate Judge reviewed the complaint pursuant to the

procedural provisions of 28 U.S.C. § 1915(e)(2). On April 30, 2013, the Magistrate Judge issued an R&R recommending that Plaintiff's complaint be summarily dismissed, without prejudice and without issuance and service of process, as to Defendants Alicia Jones, RN; Nurse Ms. Spallden, RN; Mr. Officer Corley; Mr. Officer Washington; Mr. Officer Smart; Sgt. Creech; Corporal Hughes; Ms. Officer Aldrich; Lt. Bishop; Sgt. Gilbert; Ms. Pam Smith; IGC Ann Hallman; Mr. Sgt. DeLoach; Lt. Morrison; and South Carolina Department of Corrections. (Dkt. No. 29). Plaintiff then filed timely objections to the R&R. (Dkt. No. 40).

Legal Standard

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. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is required to make a de novo determination of those portions of the R&R to which specific objection has been made, and may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1).

Under 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss a prisoner's action if it determines that the action: “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.”

In reviewing these pleadings, the Court is mindful of Plaintiff's pro se status. This Court is charged with liberally construing the pleadings of a pro se litigant. *See, e.g., De'Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003). The requirement of a liberal construction does not mean, however, that the Court can ignore a plaintiff's clear failure to allege facts that set forth a

cognizable claim, or that a court must assume the existence of a genuine issue of material fact where none exists. *See United States v. Wilson*, 699 F.3d 789, 797 (4th Cir. 2012).

Discussion

After review of the record, the R&R, and Plaintiff's objections, the Court finds the Magistrate Judge applied sound legal principles to the facts of this case and therefore wholly adopts the R&R as the order of the Court.

The Magistrate Judge recommended that the Court should summarily dismiss Defendants Jones, Spallden, Corley, Washington, Smart, Creech, Hughes, Aldrich, Bishop, Gilbert, DeLoach, and Morrison from this case because Plaintiff failed to exhaust his administrative remedies, as required by 42 U.S.C. § 1997e, regarding his allegations against these individuals. (Dkt. No. 29 at 6). Plaintiff objects that this finding is error because he did in fact file grievances against these individuals. (Dkt. No. 40 at 1). However, the Court finds it is clear from the record that Plaintiff has not filed Step 2 grievances regarding these allegations and therefore his claim against these individuals is not yet ripe for review by this Court. *See Sheppard v. Riley*, C/A No. 1:10-2424-CMC-SVH, 2011 WL 5980674, at *2-3 (D.S.C. Nov. 4, 2011) (finding where a state prisoner files a "Step 1 Grievance" but not a "Step 2 Grievance" that his claim is not ripe for review).

Furthermore, the Magistrate Judge recommended that Plaintiff's claims against Defendants Pam Smith and Ann Hallman, both inmate grievance coordinators, should be dismissed because Plaintiff has no constitutional right to a grievance procedure. *See Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994). The Magistrate Judge also recommended that the South Carolina Department of Corrections should be dismissed as a defendant pursuant to the Eleventh

Amendment. The Court agrees with the reasoning set forth by the Magistrate Judge as to these Defendants and Plaintiff has not filed objections responsive to these recommendations.

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R of the Magistrate Judge as the order of the Court. (Dkt. No. 29). Accordingly, the Court dismisses this case without prejudice and without issuance and service of process as to the following Defendants: Alicia Jones, RN; Nurse Ms. Spallden, RN; Mr. Officer Corley; Mr. Officer Washington; Mr. Officer Smart; Sgt. Creech; Corporal Hughes; Ms. Officer Aldrich; Lt. Bishop; Sgt. Gilbert; Ms. Pam Smith; IGC Ann Hallman; Mr. Sgt. DeLoach; Lt. Morrison; and the South Carolina Department of Corrections.

AND IT IS SO ORDERED.

s/Richard M. Gergel
Richard Mark Gergel
United States District Court Judge

May 22, 2013
Charleston, South Carolina