

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

Dmitry Pronin,)	
)	
Plaintiff,)	C.A. No. 5:16-3635-HMH-KDW
)	
vs.)	
)	OPINION & ORDER
Charles Wright;)	
Neal Urch;)	
Ashley McCann, and,)	
L. Blackwell,)	
)	
Defendants.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kaymani D. West, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Dmitry Pronin (“Pronin”), a pro se federal prisoner, filed a civil rights action under 42 U.S.C. § 1983 and § 1915. Pronin alleges that his constitutional rights were violated by being: (1) housed in an 8 x 10 cell with three other prisoners, (2) provided inadequate food, (3) denied use of certified mail services, and (4) denied use of a prison law library. (Compl. 5-6, ECF No. 2-2.) After careful review of the pro se complaint, Magistrate Judge West recommends that: (1) Pronin’s claims regarding housing, use of the law library, and use of certified mail services be dismissed; (2) Defendants Wright, Urch,

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

and McCann be dismissed without prejudice; and (3) Pronin’s motion for certification of a class action be denied.² (R&R 7, ECF No. 27.)

Pronin filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court was able to glean four specific objections. Pronin objects that the magistrate judge erred by: (1) finding that Pronin failed to adequately allege that Defendants Charles Wright (“Wright”) and Neal Urch (“Urch”) had personal involvement regarding the adequacy of the food provided; (2) failing to consider his motion for appointment of class counsel before recommending denial of his motion for certification of a class action; (3) recommending denying his motion for certification of a class action; and (4) finding his request for injunctive relief moot. (Objs., generally, ECF No. 37.)

First, Pronin objects that the magistrate judge erred by finding that there are no allegations from which it may be inferred that Wright or Urch had any personal involvement in the food service at the Spartanburg County Detention Center (“Spartanburg CDC”) or any

² “To prevent . . . abusive or captious litigation, § 1915(d) authorizes federal courts to dismiss a claim filed *in forma pauperis* if . . . the action is frivolous or malicious. Dismissals on these grounds are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” Neitzke v. Williams, 490 U.S. 319, 324 (1989).

knowledge, except possibly through grievances, that the food was allegedly inadequate. (Objs. 2, ECF No. 37.) Pronin argues that Wright, as Spartanburg County Sheriff, and Urch, as Spartanburg County Jail Director, are responsible for allocating and devising the budget for Spartanburg CDC. (Id., ECF No. 37.) Therefore, Pronin argues that Urch and Wright have personal involvement in the Spartanburg CDC food service and have personal knowledge about the alleged food shortage through the grievance process. (Id., ECF No. 37.) Although Pronin has failed to adequately plead a cause of action relating to Wright and Urch regarding the allegedly inadequate food in the complaint, the court recognizes that Pronin’s allegations in his objections are sufficient to plead a complaint against Wright and Urch. See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (“A document filed *pro se* is to be liberally construed . . . and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” (internal quotation marks and citations omitted)). Out of an abundance of caution and in light of Pronin’s *pro se* status, the court will allow Pronin to amend his complaint to include his allegations for Wright and Urch’s personal knowledge and involvement in food service at Spartanburg CDC.

Second, Pronin objects that the magistrate judge erred in recommending that his motion for certification of a class action be denied without first ruling on his motion for appointment of class counsel. (Objs. 2, ECF No. 37 (citing Hagan v. Rogers, 570 F.3d 146, 149 (3d Cir. 2009).) However, the magistrate judge denied Pronin’s motion for appointment of class counsel prior to issuing the Report and Recommendation. (See March 3, 2017 Order, ECF No. 26.) Therefore, the magistrate judge did not err in recommending denial of Pronin’s motion for certification of a class action without first considering his motion for appointment of class counsel. As a result, Pronin’s objection is without merit.

Third, Pronin objects that the magistrate judge erred in recommending that his motion for certification of a class action be denied. (Objs. 3, ECF No. 37.) Pronin argues that the magistrate judge failed to fully consider whether certification was appropriate because the magistrate judge did not properly analyze whether Pronin’s proposed class meets the prerequisites for certification provided in Rule 23(a) of the Federal Rules of Civil Procedure. (Id. at 3, ECF No. 37.)

Rule 23(a) states:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Typically, a factual record must be developed before the court may rule on certifying or denying certification. Boyce v. Wachovia Sec., LLC, No. 5:09-cv-263-FC, 2010 WL 1253737, at *3 (E.D.N.C. Mar. 20, 2010) (unpublished). However, “where the complaint demonstrates as a matter of law that plaintiffs cannot meet the requirements for maintaining a class action,” the court may dismiss without fully developing the record. Id. at *4. Here, the magistrate judge found that Pronin, as a pro se prisoner, was not an appropriate representative for the proposed class. (R&R 6-7, ECF No. 27.) Moreover, the Fourth Circuit has found that a pro se prisoner cannot serve as an advocate for a class action. See Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975). As Pronin must satisfy all four prerequisites of Rule 23(a) to bring a

claim on behalf of the proposed class, the magistrate judge did not err in recommending that his motion for certification of a class action be denied. As a result, Pronin's objection is without merit.

Lastly, Pronin objects that his request for injunctive relief is not moot because it pertained to his proposed class action. (Objs. 3, ECF No. 37.) As the court has found that the magistrate judge did not err in recommending that Pronin's motion for class certification should be denied, his objection is moot.

Therefore, after a thorough review of the Report and Recommendation and the record in this case, the court adopts the magistrate judge's Report and Recommendation to the extent it is consistent with this order.

It is therefore

ORDERED that Pronin's complaint as to McCann is dismissed without prejudice. It is further

ORDERED that Pronin file an amended complaint within 15 days of this order. It is further

ORDERED that Pronin's motion for certification of a class action, docket number 22, is denied. It is further

ORDERED that this case is remanded to the magistrate judge for further proceedings.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 3, 2017

NOTICE OF RIGHT TO APPEAL DENIAL OF CERTIFICATION OF CLASS ACTION

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.