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

JAMES G. BLAKELY, also known as James Gatewood Blakely, also known as Jimmy G. Blakely, Plaintiff,	§	
vs.	§	CIVIL ACTION NO. 5:17-01040-MGL
B.P. STIRLING, Dir.; M. McCALL, Associate Dir.; D. BUSH, Warden; M. STEPHAN, Associate Warden; and SGT. JACKSON, Defendants.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION AND DENYING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Plaintiff's Motion for Leave to Proceed in forma pauperis be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *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 to which specific objection is made, and the Court 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 Magistrate Judge filed the Report on May 10, 2017, and the Clerk of Court entered Plaintiff's objections to the Report on May 17, 2017. The Court has reviewed the objections, but holds them to be meritless. Therefore, it will enter judgment accordingly.

In Plaintiff's objections, he argues the "three strikes" rule contained at 28 U.S.C. § 1915(g) constitutes "a disciplinary action with a constitutional penalty." ECF No. 12 at 1. Plaintiff also contends the "three strikes" rule is inconsistent with the provision at § 1915(b)(4) allowing indigent prisoners to proceed in forma pauperis. *Id.* at 2. Furthermore, Plaintiff insists there must be a limit to the "three strikes" rule and claims the imposition of the rule in his case works an injustice. *Id.* at 3-4. The Court is unpersuaded.

Section 1915(g) provides:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Id. As noted by the Magistrate Judge, Plaintiff has failed to show he is in imminent danger of serious physical injury sufficient to satisfy the limited exception contained in § 1915(g). Moreover, Plaintiff neglects to meaningfully contest the fact that the Fourth Circuit Court of Appeals determined Plaintiff has struck out under § 1915(g), and no court has restored his ability to proceed in forma pauperis. *See Blakely v. Wards*, 738 F.3d 607, 617 & n.8 (4th Cir. 2013) (en banc) (holding Plaintiff has "accrued three qualifying strikes in the context of summary judgment"). Therefore, the Court will overrule Plaintiff's objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court Plaintiff's Motion for Leave to Proceed in forma pauperis is **DENIED**. Plaintiff is given 15 days from the date of the issuance of this Order to pay the filing fee of $400, and the Office of the Clerk of Court shall withhold entry of judgment until such time expires. If Plaintiff fails to timely pay the filing fee, the Complaint shall be **DISMISSED WITHOUT PREJUDICE** under the "three strikes" rule of 28 U.S.C. § 1915(g), and the Clerk shall enter the required final judgment at the close of the 15-day period permitted for payment of the filing fee.

IT IS SO ORDERED.

Signed this 18th day of May, 2017, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

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NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.