

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Alonzo R. Brinkley, II,) C/A No. 6:07-3626-JFA-WMC
vs.)
Plaintiff,)
)
Three Unknown Correctional Officers of the South)
Carolina Department of Corrections at Evans)
Correctional Institution; Sergeant Samuel Wilson,)
)
Defendants.)
)

vs.) ORDER
Plaintiff,)
)
Three Unknown Correctional Officers of the South)
Carolina Department of Corrections at Evans)
Correctional Institution; Sergeant Samuel Wilson,)
)
Defendants.)
)

The *pro se* plaintiff, Alonzo Brinkley, filed this action on November 5, 2007 pursuant to 42 U.S.C. § 1983. He alleges while he was incarcerated at the Evans Correctional Institution in 2004, he was assaulted and battered by the defendants during an institutional lock down.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should dismiss the defendants captioned “Three Unknown Correctional Officers.” The Magistrate Judge notes that the plaintiff has received four extensions of time to serve the defendants. Although the plaintiff filed an amended complaint on February 2, 2009 naming defendant Watson, he still named the

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. 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 (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 to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

“Three Unknown Correctional Officers.” The plaintiff appears to have served Sergeant Watson, but he has not provided proof of service on the other unnamed defendants pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. As such, those defendants are subject to dismissal.

This case will be three years old in November 2010. As the Magistrate Judge notes in his Report, it has been nearly two and one-half years since the plaintiff filed his original complaint and over a year since he filed his amended complaint. Despite numerous extensions of time and failure to identify the unknown correctional officers, the Magistrate Judge recommends that the motion to dismiss (doc. # 43) as to these unnamed and unserved defendants be granted. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

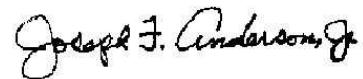
The parties were advised of their right to file objections to the Report and Recommendation, which was entered on the docket on April 13, 2010. However, neither party filed any objections² to the Report within the time limits prescribed.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed as to defendants

² Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge’s Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

Three Unknown Correctional Officers pursuant to Fed. R. Civ. P. 12(b)(4) and (5). The Clerk shall return this file to the Magistrate Judge for review of defendant Watson's motion for summary judgment.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

May 6, 2010
Columbia, South Carolina