

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

Jerome Myers, # 258396,)	C/A NO. 6:09-1076-CMC-WMC
)	
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
Gregory Knowlin, Warden of Turbeville)	
Correctional Institution,)	
)	
Respondent.)	
_____)	

This matter is before the court on Petitioner’s *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge William M. Catoe for pre-trial proceedings and a Report and Recommendation (“Report”). On February 10, 2010, the Magistrate Judge issued a Report recommending that Respondent’s motion for summary judgment be granted on the claims addressed, and that Respondent be given an opportunity to file a supplemental return addressing additional grounds for relief raised by Petitioner which were not addressed in the original Return. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on February 24, 2010, and Respondent filed a reply to the objections on March 1, 2010.

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. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report of the Magistrate Judge to which a 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 to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, Petitioner's objections and Respondent's Reply, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Petitioner's objections are the same arguments presented in his Opposition to Respondent's Motion for Summary Judgment, and, therefore, for the reasons stated by the Magistrate Judge, which this court has adopted, Petitioner's objections are rejected.

CONCLUSION

Based on the foregoing and the Report issued by the Magistrate Judge, Respondents' motion for summary judgment is **granted**. Petitioner's motion for an evidentiary hearing (Dkt. # 23, filed Oct. 7, 2009) is **denied**. This matter is returned to the Magistrate Judge for further proceedings.

The court notes that Respondent indicates that he is willing to waive the procedural default argument relating to the issues contained in the *Johnson* petition and Petitioner's pro se brief supporting the *Johnson* petition due to positions taken by several judges of this district and because the Magistrate Judge "addresses the merits of the Petition to which Respondent has responded." Resp. at 5 (Dkt. # 32, filed Mar. 1, 2010). Therefore, any supplemental return filed by Respondent should address the remaining issues on their merits.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
March 12, 2010

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