

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

Daniel Shannon,)	C/A No.: 6:12-2938-JFA-KFM
)	
Plaintiff,)	
)	
v.)	ORDER
)	
South Carolina Department of Corrections;)	
Mr. William Byars, Jr., Director at SCDC;)	
John Ozmint; Robert Ward, Division Director,)	
SCDC; David McCall, Warden, Perry)	
Correctional Institution; Daniel Murphy;)	
Elbert Pearson, SCDC STG Coordinator;)	
Jannita Gaston, Chair of the MSC Committee,)	
SCDC; Dennis Patterson, SCDC; Dedric)	
Williams; Colie Rushton, SCDC; Aaron)	
Joyner, Associate Warden, KCI; Bernard)	
McKie, Warden, KCI; Yvonne Lofton,)	
Classification, KCI; Vaughn Jackson, Major,)	
KCI; John Does; and Jane Does,)	
)	
Defendants.)	
)	

The *pro se* plaintiff, Daniel Shannon, brings this action pursuant to 42 U.S.C. § 1983, alleging that the defendants continue to violate his due process rights by failing to afford him adequate procedures when determining his continued retainment within the Maximum Security Unit at the South Carolina Department of Corrections.

The Magistrate Judge assigned to this action¹ has prepared an Amended Report and

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

Recommendation and opines that the defendants' motions to be dismissed² (ECF Nos. 21, 25) should be granted in part and denied in part. 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 Magistrate Judge first suggests that plaintiff's claims for damages against the defendants in their *official* capacities should be dismissed. This court agrees, as the defendants are immune from suit for damages in their official capacity under the Eleventh Amendment to the Constitution.

The Magistrate Judge also suggests, and this court agrees, that the plaintiff's claims are not barred by the statute of limitations and thus, the defendants' motions to dismiss on this basis should be denied.

With regard to the defendant's argument that the plaintiff's claims should be dismissed for failure to state a claim, the Magistrate Judge suggests that the plaintiff has plausibly alleged facts that give rise to a liberty interest, thus the defendants' motions to dismiss should not be granted on this basis. This court agrees.

Because the plaintiff has plausibly alleged in his complaint that his constitutional rights were violated and that his due process rights were clearly established, the Magistrate Judge recommends that the defendants' motions to dismiss the damages claims against them

of the Report and Recommendation 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. *See* 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying plaintiff of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion to dismiss. The plaintiff responded to both motions to dismiss.

in their individual capacities on the basis of qualified immunity be denied. This court agrees.

Finally, as to the claims against defendant Ozmint, the Magistrate Judge suggests that plaintiff has stated a claim to relief that is plausible on its face against Ozmint such that he should not be dismissed from the action. This court agrees.

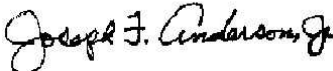
The parties were notified of their right to file objections to the Amended Report and Recommendation (ECF No. 72). The defendants have responded and state that they have no objections to the Amended Report. The plaintiff has responded indicating that he has no objections to the Amended Report either.

The court has carefully reviewed the applicable laws, the record in this case, the Amended Report and Recommendation, and the responses thereto, and finds that the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Amended Report is adopted and incorporated herein by reference.

Accordingly, the defendants' motions to dismiss (ECF Nos. 21, 25) are granted in part and denied in part. Any damages claims against the defendants in their official capacity are dismissed. All remaining claims shall proceed before the Magistrate Judge for review in accordance with 28 U.S.C. § 636(b)(1)(B).

IT IS SO ORDERED.

December 3, 2013
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge