

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

Dimitrious Pierre David, #58431-004,)
a/k/a Corey Tyrone Shinhoster,)
)
Petitioner,)
)
vs.)
)
Warden Travis Bragg, FCI-Bennettsville,)
)
Respondent.)

C.A. No. 6:15-2109-HMH-KFM

OPINION & ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) 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 this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (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, 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. See 28 U.S.C. § 636(b)(1) (2006).

A Report and Recommendation was issued in this case on May 29, 2015. Within the initial deadline for objections to the Report and Recommendation, the Petitioner filed no objections. Having received no objections, the court issued an order on June 18, 2015, adopting the Report and Recommendation. (June 18, 2015 Order, ECF No. 12.) However, the

Petitioner filed a motion for reconsideration on June 29, 2015, requesting additional time to file his objections arguing that he never received Judge McDonald's Report and Recommendation. (Mot. Reconsider, ECF No. 15.) The court granted the Petitioner's motion and afforded fourteen days to submit objections. (July 28, 2015 Order, ECF No. 17.) The court received no objections and on August 17, 2015, the court issued an order adopting the Report and Recommendation. (Aug. 17, 2015 Order, ECF No. 22.) Again, on September 3, 2015, Petitioner filed a motion for reconsideration alleging that he did not receive the Report and Recommendation. (Mot. Reconsider, ECF No. 25.) Again, the court granted the motion and afforded fourteen days to respond to the Report and Recommendation. (Sept. 3, 2015 Order, ECF No. 27.) The objections were due by September 17, 2015. To date, the Petitioner has again failed to file any objections.

The Report and Recommendation was mailed to the address provided by Petitioner on May 29, 2015. (Doc. Mailing, ECF No. 9.) Further, the Report and Recommendation was mailed again to the Petitioner at his address of record on September 3, 2015. (Doc. Mailing, ECF No. 28.) There is a presumption that Petitioner received the Report and Recommendation by mail, especially since the mailings have not been returned as undeliverable. Fed. Deposit Ins. Corp. v. Schaffer, 731 F.2d 1134, 1137 n.6 (4th Cir. 1984) (holding a letter properly addressed, stamped, and mailed is presumed to have been received by the addressee).

In the absence of objections to the magistrate judge's Report and Recommendation, 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). The court must "only satisfy itself that

there is no clear error on the face of the record in order to accept the recommendation.”

Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge McDonald’s Report and Recommendation and incorporates it herein. It is therefore

ORDERED that the § 2241 petition is dismissed without prejudice and without requiring the Respondent to file an Answer or return. It is further

ORDERED that a certificate of appealability is denied because the Petitioner has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

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

Greenville, South Carolina
September 30, 2015

NOTICE OF RIGHT TO APPEAL

The Petitioner is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.