

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

2015 OCT 26 A 8:33

Marcus Brooks, #04755-036,)
)
 Petitioner,)
)
 vs.)
)
 Warden Thomas,)
)
 Respondent.)
 _____)

No. 6:15-2963-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge, recommending that Petitioner’s petition filed pursuant to 28 U.S.C. § 2241 be dismissed without prejudice because the proper procedure for asserting his habeas claim under *Johnson v. United States*, 135 S.Ct. 2551 (2015) is through a motion to vacate before his sentencing court in the District of Maine under 28 U.S.C. § 2255. (Dkt. No. 17). Petitioner was advised of his right to file objections to the R & R and a failure to timely file objections would result in limited review by the District Court and waiver of the right to appeal the judgment of the District Court. (Dkt. No. 17 at 3). Petitioner responded to the R & R by acknowledging his error and informing the Magistrate Judge of his intention to petition his sentencing court pursuant to § 2255. (Dkt. No. 14). The Magistrate Judge recommended that Respondent’s motion to dismiss (Dkt. No. 10) be granted without prejudice.

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, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28

U.S.C. § 636(b)(1). This Court is charged with making a de novo determination of those portions of the R & R to which objection is made. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting 28 U.S.C. § 636(b)(1)); accord Fed. R. Civ. P. 72(b). However, as is the case here, where no objections are made, this Court “must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.* (quoting Fed. R. Civ. P 72 advisory committee note). Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the Magistrate Judge’s analysis and recommendation. See *Camby v. Davis*, 718 F.2d 198, 199-200 (4th Cir. 1983).

After a careful review of the R & R, the record evidence and the applicable statutory and case law, the Court finds that the Magistrate Judge ably addressed the factual and legal issues in this matter and correctly concluded that this matter should be dismissed without prejudice. Therefore, the Court **ADOPTS** in full the Magistrate Judge’s Report and Recommendation (Dkt. No. 17) as the order of this Court, **GRANTS** Respondent’s motion to dismiss (Dkt. No. 10) and hereby **DISMISSES** this petition without prejudice.

IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

October 23, 2015
Charleston, South Carolina