

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

Emergildo Roman,)	
)	
Petitioner,)	Civil Action No.: 6:18-cv-01098-JMC
)	
v.)	
)	
H. Joyner,)	ORDER
)	
Respondent.)	
_____)	

Before the court for review is the Magistrate Judge’s Report and Recommendation (“Report”) filed on April 19, 2019 (ECF No. 45). The court **ACCEPTS** the Magistrate Judge’s Report and incorporates it herein by reference. For the reasons set out in the Report, the court **GRANTS** Respondent H. Joyner’s Motion to Dismiss or in the Alternative, for Summary Judgment (ECF No. 31), **DISMISSES** *without prejudice* Plaintiff Emergildo Roman’s Petition for Writ of Habeas Corpus (ECF No. 1) for lack of subject matter jurisdiction, and **DENIES AS MOOT** Petitioner’s Motion to Voluntarily Dismiss (ECF No. 45).

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a full recitation. (ECF No. 12 at 1–5, 7.) As brief background, on May 20, 2018, Petitioner, proceeding pro se, filed this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. (ECF No. 1.) On August 8, 2018, Petitioner filed an Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. (ECF No. 27.) On September 6, 2018, Respondent filed a Motion to Dismiss or in the Alternative, for Summary Judgment. (ECF Nos. 31, 31-1.) On September 7,

2018, the Magistrate Judge entered a *Roseboro*¹ order, advising Petitioner of the motion to dismiss and summary judgment procedures and the consequences of failing to adequately respond. (ECF No. 32.) On November 26, 2018, after being granted an extension, Petitioner filed a Reply in Opposition to Respondent’s Motion. (ECF Nos. 38, 41.)

On April 19, 2019, the Magistrate Judge entered his Report. (ECF No. 43.) The Report recommends granting Respondent’s Motion (ECF No. 31) because (1) “[P]etitioner has failed to satisfy his burden of demonstrating that § 2255 is an inadequate or ineffective means of challenging the validity of his detention”; and (2) “[P]etitioner’s convictions under [18 U.S.C.] § 924(c) are predicated on federal armed bank robbery, which is a crime of violence under the force clause of § 924(c)(3)(A), [thus,] a determination that the residual clause of § 924(c) is unconstitutional would not provide him any relief.” (*Id.* at 6, 9.)

On May 8, 2019, after reviewing the Magistrate Judge’s Report, Petitioner filed a Motion to Voluntarily Dismiss his § 2241 Habeas Petition until the resolution of a case currently pending before the United States Supreme Court. (ECF No. 45 at 1.)

II. STANDARD OF REVIEW

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District Court of South Carolina. The Magistrate Judge only makes a recommendation to this court; the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This court engages in a de novo review of those portions of the Report and Recommendation to which the parties have made specific objections. *See* 28 U.S.C. § 636(b)(1). *See also* Fed. R. Civ. P. 72(b)(3). The court

¹ In *Roseboro v. Garrison*, the United States Court of Appeals for the Fourth Circuit held that district courts are required to provide pro se litigants with an explanation of summary judgment procedures. 528 F.2d 309, 310 (4th Cir. 1975).

may accept, reject or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

III. DISCUSSION

On May 19, 2019, as part of the Report, the Magistrate Judge notified the parties of their right to file objections by May 3, 2019. (ECF No. 43 at 11.) Neither of the parties filed any objections to the Report by this date. In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendations without modification. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Absent objections, the court must only ensure that there is no clear error on the face of the record in order to accept the recommendations. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). If a party fails to file specific, written objections to the Report, the party forfeits the right to appeal the court's decision concerning the Report. 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). Accordingly, since none of the parties filed any objections to the Report, and the court observes no clear error on the face of the record, the court accepts the Magistrate Judge's Report. *See Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 199. Also, because the court accepts the Magistrate Judge's Report, the court denies as moot Petitioner's Motion to Voluntarily Dismiss (ECF No. 45).²

² Several circuit courts have held that if a "§ 2241 petition was decided on the merits, § 2244(a) bar[s] a second § 2241 habeas petition which presents no new grounds for relief unless the ends of justice require consideration of the merits." *Fleming v. Brooks*, No. 2:01-CV-582, 2002 WL 32488475, at *4 (E.D. Va. June 21, 2002), *aff'd*, 57 F. App'x 177 (4th Cir. 2003). Thus, as far as the court can tell, and considering that Petitioner's § 2241 Habeas Petition is being dismissed without prejudice, there would be no bar to Petitioner filing another § 2241 Habeas Petition based on a *new* decision by the United States Supreme Court. *See id.* ("[If a] § 2241 petition was decided on the merits, § 2244(a) bar[s] a second § 2241 habeas petition *which presents no new grounds for relief* unless the ends of justice require consideration of the merits." (emphasis added)).

IV. CONCLUSION

After a thorough and careful review of the record, the court finds the Magistrate Judge's Report and Recommendation provides an accurate summary of the facts and law in this case. Accordingly, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 43) and incorporates it herein by reference. For the reasons set out in the Report, the court **GRANTS** Respondent H. Joyner's Motion to Dismiss or in the Alternative, for Summary Judgment (ECF No. 31), **DISMISSES** *without prejudice* Plaintiff Emergildo Roman's Petition for Writ of Habeas Corpus (ECF No. 1) for lack of subject matter jurisdiction, and **DENIES AS MOOT** Petitioner's Motion to Voluntarily Dismiss (ECF No. 45).

IT IS SO ORDERED.



United States District Judge

May 10, 2019
Columbia, South Carolina