

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

Devon Dent,)
)
 Plaintiff,)
)
 vs.)
)
 J. Tucker, Stephen Hoey, K. Nolte,)
 D. Brown, T. Truesdale, Officer)
 Luptosky,)
 Defendants.)
_____)

Case No.: 6:23-cv-3404-JD-KFM

ORDER AND OPINION

This matter is before the Court with the Report and Recommendation (“Report”) of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ (DE 26.) Plaintiff Devon Dent (“Plaintiff” or “Dent”), a federal prisoner proceeding *pro se* and *in forma pauperis*, brings this action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1999), and the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b), alleging violations of his constitutional rights by Defendants J. Tucker (“Lt. Tucker”), Stephen Hoey (“Dr. Hoey”), K. Nolte (“Nolte”), D. Brown (“Capt. Brown”), T. Truesdale (“Nurse Truesdale”), and Officer Luptosky (collectively “Defendants”). (DE 1.)

Plaintiff is in the custody of the Bureau of Prisons (“BOP”) and located at USP Victorville, but he seeks damages based upon his time at Federal Correctional Institution Williamsburg (“FCI Williamsburg”). (DE 1, p. 13.) Plaintiff contends that Lt. Tucker was

¹

The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District 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. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

negligent in failing to protect him from an attack on August 23, 2021. (Id. at 18.) Dent contends that Nurse Truesdale, Ms. Nolte, Capt. Brown, and Dr. Hoey denied him adequate medical care under the Eighth Amendment. (Id. at 19.) He further contends that Officer Lupotsky violated his due process rights by finding him guilty of a disciplinary infraction based on the August 23, 2021, incident. (Id. at 19–20.)

Plaintiff's complaint was entered on the docket on July 17, 2023. (DE 1.) On September 19, 2023, the Court issued an order informing Plaintiff that his complaint was subject to dismissal as drafted and provided him with time to file an amended complaint to correct the deficiencies noted in the order. (DE 15.) Plaintiff was informed that if he failed to file an amended complaint or cure the deficiencies outlined in the order, the Magistrate Judge would recommend that his claims be dismissed. (Id. at 12–13). On October 2, 2023, at Plaintiff's request, the Court provided Plaintiff with an additional thirty days to file an amended complaint as instructed. (DE 17, 20.) However, despite the additional time, Plaintiff has failed to file an amended complaint.

The Report was issued on November 13, 2023, recommending Plaintiff's case be dismissed for failure to comply with a Court order. (DE 26.) Plaintiff has not filed an objection to the Report. In the absence of objections to the 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).

Accordingly, after a thorough review of the Report and Recommendation and the record in this case, the Court finds no clear error on the face of the record. Therefore, the Court adopts the Report (DE 26) and incorporates it herein by reference.

It is, therefore, **ORDERED** that Plaintiff's case is dismissed with prejudice, without further leave to amend, and without issuance and service of process.

IT IS SO ORDERED.

s/ Joseph Dawson, III
United States District Judge

Florence, South Carolina
December 28, 2023

NOTICE OF RIGHT TO APPEAL

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