

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Herbert Lee Rutledge, #236287,)	Civil Action No.: 8:08-2336-HMH-BHH
)	
Petitioner,)	
)	<u>REPORT AND RECOMMENDATION</u>
vs.)	<u>OF MAGISTRATE JUDGE</u>
)	
Warden of Allendale Correctional Institution,)	
)	
Respondent.)	

The petitioner brought this action seeking relief pursuant to Title 28, United States Code, Section 2254. On December 1, 2008, the respondent filed a motion for summary judgment. On December 2, 2008, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Three motions for extension of time filed by the petitioner were granted and his response to the motion for summary judgment was due on February 25, 2009. On February 26, 2009, the petitioner filed his own motion for summary judgment, but he did not respond to the issues raised in the respondent's summary judgment motion.

As the petitioner is proceeding *pro se*, the court filed a second order on March 5, 2009, giving the plaintiff through March 27, 2009, to file his response to the motion for summary judgment. This order was mailed to the petitioner's last known address at the Allendale Correctional Institution, PO Box 1151, Fairfax, SC 29827. The envelope containing this order was returned to the court as the petitioner is apparently released and no longer incarcerated at the Allendale Correctional Institution.

The record reveals that the petitioner was advised by order dated June 30, 2008

of his responsibility to notify the court *in writing* if his address changed.

Based on the foregoing, it appears the petitioner no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed *with prejudice* for lack of prosecution and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce H. Hendricks
United States Magistrate Judge

March 17, 2009

Greenville, South Carolina