

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

Isaac Hayes Nelson, #64391,)	
)	
Plaintiff,)	C.A. No. 8:10-1831-HMH-BHH
)	
vs.)	OPINION & ORDER
)	
James Metts; Trinity Food Service,)	
)	
Defendants.)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Bruce Howe Hendricks, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Isaac Hayes Nelson (“Nelson”), a state detainee proceeding pro se, brought an action under 42 U.S.C. § 1983 alleging violations to his civil rights. In her Report and Recommendation, Magistrate Judge Hendricks recommends dismissing the complaint without prejudice and without issuance and service of process. (Report and Recommendation 6.)

Nelson filed objections to the Report and Recommendation. Construing his objections liberally, Nelson objects to the magistrate judge’s conclusion that he has failed to state a claim for relief pursuant to 42 U.S.C. § 1983 for unconstitutional conditions of confinement arising from food service at the Lexington County Detention Center (“LCDC”). (Objections,

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).

generally.) In his objections, Nelson describes how he was served spoiled food and became very ill on April 27, 2010. (Id.) Nelson identifies James Metts as the person in charge of the LCDC and Trinity Food Service as the food service provider at LCDC. (Id.) Nelson alleges that

Sheriff Metts should have a procedure for Trinity Food Service to go by daily when preparing, serving, and storing food. Especially that left over chili like meat they feed us on April 27, 2010 from that morning and again the evening for dinner. Plus some parts of the jail didn't have any air condition either, which would made left out food spoil sooner.

(Id. 5.) With respect to Trinity Food Service, Nelson alleges that “[t]hey ought to make sure that their staff follow out the same procedures properly. Instead of the defendants trying to cut the budget by serving us left over food.” (Id.) Under Farmer v. Brennan, 511 U.S. 825, 837 (1994),

a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Considering Nelson's objections as amendments to his complaint, the court finds that he has sufficiently stated a claim for relief under 42 U.S.C. § 1983 for violation of the Eighth Amendment. Accepting Nelson's allegations as true and liberally construing those allegations, the court finds that he has alleged that the Defendants were aware of and disregarded a known risk to his health and safety. Based on the foregoing, the court declines to adopt Magistrate Judge Hendricks' Report and Recommendation.

It is therefore

ORDERED that this matter is remanded to the magistrate judge for further proceedings.

It is further

ORDERED that Nelson's motion to amend the complaint, docket number 16, is granted.

IT IS SO ORDERED.

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

Greenville, South Carolina
August 27, 2010