

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

Eugene Gee Gary, #231045,)	
)	C/A No. 8:12-2915-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
South Carolina Depart. of Corrections,)	
)	
Defendants.)	
_____)	

Plaintiff Eugene Gee Gary is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at Lieber Correctional Institution in Ridgeville, South Carolina. Plaintiff, proceeding pro se, filed a complaint on October 15, 2012, alleging that he was subjected to unconstitutional conditions of confinement. Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915(e) and 1915A. On October 23, 2012, the Magistrate Judge issued a Report and Recommendation in which she determined that Defendant is entitled to Eleventh Amendment immunity. Accordingly, the Magistrate Judge recommended that the complaint summarily dismissed. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead 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).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

November 15, 2012

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.